(18,687.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903.

No. 141.

BANKERS MUTUAL CASUALTY COMPANY, PLAINTIFF IN ERROR,

vs.

THE MINNEAPOLIS, ST. PAUL AND SAULT SAINTE MARIE RAILWAY COMPANY.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the May term, 1902, of said court, begun and held at the United States court house in the city of St. Paul, Minnesota, on the first Monday in May, to-wit: the fifth day of May, A. D. 1902, before the Honorable Walter H. Sanborn and the Honorable Amos M. Thayer, circuit judges, and the Honorable John E. Carland, district judge.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

Attest: JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to-wit: on the sixth day of March, A. D. 1902, a transcript of record, pursuant to a writ of error directed to the circuit court of the United States for the district of Minnesota, was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit, in a certain cause wherein The Bankers Mutual Casualty Company was plaintiff in error, and The Minneapolis, St. Paul and Sault Sainte Marie Railway Company was defendant in error, which said transcript of record is in the words and figures following, to-wit:

1 United States Circuit Court, District of Minnesota,
Fourth Division.

Bankers Mutual Casualty Company, Substituted Plaintiff,
vs.
Minneapolis, St. Paul and Sault Sainte Marie Railway Company, Defendant.

Assignment of Errors.

Comes now the Substituted Plaintiff, The Bankers Mutual Casualty Company of Des Moines, Iowa, and alleges that in the above entitled cause the order of the Court sustaining the demurrer of defendant to the amended and substituted complaint filed by this plaintiff, and also the final judgment in said cause dismissing the complaint and for costs against this plaintiff, are erroneous, and against the rights of this plaintiff, and that there is manifest error therein upon the face of the record for the following reasons:

First. The Court erred in holding and ruling that the Amended and Substituted Complaint filed by the substituted plaintiff, the Bankers Mutual Casualty Company, does not state a cause of action against defendant, and erred in sustaining defendant's demurrer to plaintiff's petition upon each and any of the several grounds contained in said demurrer, and erred in rendering final judgment for defendant in said cause.

Second. The negligence of the defendant being admitted by the demurrer, the Court erred in holding that defendant owed no duty to The German State Bank, as the owner of a registered package contained in the United States mail, but owed such duty, if at all, only to the government of the United States, and erred in holding that defendant was not liable to plaintiff for the loss of such registered package caused or occasioned by defendant's said negligence.

Third. That negligence of the defendant being admitted by the demurrer, the Court erred in denying and in refusing to hold in favor of plaintiff, any of the following propo-
2 sitions: (1) That defendant owed said The German State Bank, as one of the public, using the mails for a legal purpose, the duty to carry said money package safely, such duty being imposed by a law of Congress for the benefit of The German State Bank and others of the public using the mails; or, (2) That defendant, as a common carrier in respect to said package, owed said German State Bank and

others using the mail, the duty to exercise due care in handling their property; or (3) that defendant was, at least, a bailee for hire in respect to said registered package the compensation being paid by the United States for the benefit of said The German State Bank and others lawfully transmitting packages by mail.

Fourth. The Court erred in holding that defendant, as a carrier of the United States Mails, under the United States statutes and the regulations of, and notification from the United States Post-office department, was not liable to the owner of a registered package contained in a mail-sack, in course of transmission through the United States mails, for the loss of such registered package, when such loss was caused or occasioned by or through the negligence of said defendant, while the mail-sack containing such registered package was in the care and custody of defendant for safe keeping and transmission thereof to the Post-office, at the point of destination.

Fifth. The Court erred in refusing to hold that defendant was under a statutory obligation to persons using the United States mails to safely care for the United States mail-sacks, received by defendant or its employee, from defendant's train at its depot at Harvey, and the registered package in question, therein contained, after said mail-sack was so received and during the night, and on the following morning to safely carry and deliver the same to the Post master or Post-Mistress at said town of Harvey, and erred in refusing to hold that the negligence of defendant, in failing to safely care for said mail-sack and the registered package therein contained, whereby said registered package was wholly lost, rendered defendant liable to The German State Bank as the owner of the said registered package for the amount of the loss caused by defendant's said negligence.

3 Sixth. The Court erred in holding that defendant, as a carrier of the United States mails, under the United States statutes and the regulations of and notification from the Post Office Department, was not liable to the owner of a registered package, contained in a mail-sack in course of transmission through the United States mails, for the loss of such registered package, when such loss was caused or occasioned by or throught the negligence of one of defendant's employees, charged by defendant with the care or custody of the mail-sack containing said registered package, while said mail-sack was in the care or custody of defendant's said employee for safe keeping and transmission to the Post Office at the point of destination.

Seventh. The Court erred in refusing to hold that defendant, as a railway corporation and common carrier of freight and passengers, was under statutory obligation to safely carry and care for, mails received for carriage by it, under the United States Statutes and regulations of and notification from the United States Post Office Department, for a compensation paid or to be paid to defendant by the United States Government, and in refusing to hold that defendant was liable to The German State Bank as owner of the registered package in question, for a loss caused or occasioned by defendant's own negligence or the negligence of defendant's employee, placed by defendant in the care or custody of mail received for carriage or carried by said defendant, while in the course of transmission and prior to the delivery of said mail to the Post Master or Post Mistress at the point of destination, the registered package in question having been lost in consequence of such negligence.

Eighth. The Court erred in holding that defendant and its night operator or night agent, or either of them, were public agents and engaged in the public service, when caring for or transporting the mail-sack containing the registered
4 package in question, it being admitted by demurrer that neither said defendant, nor said night operator or night agent, had been sworn into the Postal service of the United States.

Ninth. It being admitted, by demurrer, that defendant was not sworn into the Postal service of the United States, and that defendant's employee who received the mail-sack, containing the registered package in question, and took charge thereof, during the night and until delivered to the Post Master or Post Mistress at Harvey, on the following morning, was not sworn into the Postal service of the United States, the Court erred in refusing to hold that neither said defendant nor its said employee was a public agent, and that said defendant was not exempt from the rule of respondent superior, but was answerable for the negligence of itself and of its said employee, and liable to the owner for the loss of said registered package, caused by said negligence.

Tenth. The Court erred in refusing to hold that the exemption of a principal public agent from liability for the negligence of his employee, as a subordinate public agent, only obtains when such subordinate public agent is appointed by his principal, by virtue of some law expressly authorizing such appointment, and that under the facts alleged, defendant appointed its said night agent or night operator, independent of any express authority of law, and said night agent or night

operator was, therefore, the mere private employee of defendant, and defendant was subject to the rule of respondent superior as to the defaults or misfeasances on the part of its said employee, alleged in the Complaint.

Eleventh. The Court erred in holding that defendant and its night operator or night agent, or either of them, were public agents, and engaged in the public service while caring for the mail-sack, containing the registered package in question, it being admitted by demurrer, that defendant was a common carrier of passengers and freight by steam Railway, incidentally carrying the mails of the United States for a compensation paid or to be paid to defendant by the United States under the United States Statutes and regulations of and notification from the United States Post Office Department, and the said night operator, or night agent, was an ordinary employee or representative of defendant, incidentally caring for the United States mails received at defendant's station at Harvey.

Twelfth. The Court erred in refusing to hold that defendant as a Railway Corporation and common carrier of freight and passengers, was a common carrier of the United States mails and of the registered money package therein contained, owned by The German State Bank, received for carriage by it under the United States Statutes and regulations of and notification from the United States Post Office Department, and for a compensation paid or to be paid to defendant, by the United States Government, and erred in refusing to hold that defendant was liable, as such common carrier, for the negligence of said defendant or its employee, in the care or custody of mails, properly in its possession or custody, while in course of transmission to the post-office at Harvey, and prior to delivery thereof to the Post Master or Post Mistress at Harvey, said negligence having caused the loss of the registered package in question.

Thirteenth. The Court erred in refusing to hold that defendant, as a Railway Corporation and common carrier of freight and passengers, was a bailee for hire of the mails, and of the registered packages therein contained, received for carriage or carried by it, under the United States Statutes and regulations of and notification from the United States Post Office Department, for a compensation paid or to be paid to defendant by the United States Government, and in refusing to hold that defendant, as such bailee for hire, was liable to the German State Bank as the owner of such registered package, for the negligence of said defendant or its employee, in the care or custody of such mails, properly in its possession

or custody while in course of transmission to the Post Office at Harvey, and prior to its delivery to the Post Master or Post Mistress at Harvey, the loss of the registered package in question having occurred by reason of such negligence.

6 Fourteenth. The Court erred in holding that the failure of defendant to provide some room, receptacle or other place, in which to safely care for, guard or protect, under lock and key or other secure fastening, the United States mail-sack containing mail matter, in course of transmission through the United States mails, during the time such mail-sack was in the care or custody of defendant, between the time of its arrival at defendant's station at Harvey, and the time of the delivery of said mail, by defendant or its employee, to the Post Master or Post Mistress at the Town of Harvey, did not constitute negligence for which defendant was responsible to the German State Bank as the owner of registered mail matter lost by reason thereof, to the extent of the loss occasioned by defendant's said failure.

Fifteenth. The Court erred in holding that the failure of defendant to provide some competent person, duly sworn into the Postal service of the United States, at its station at Harvey, to receive United States mail from defendant's train, and to have charge of and to safely watch and guard the same during the night, from the time of the arrival of said mail at said station until the same was safely delivered, on the following morning, to the Post Master or Post Mistress at the town of Harvey, did not constitute negligence on the part of defendant, for which defendant was responsible to the German State Bank as the owner of a registered package lost by reason thereof, to the extent of the loss occasioned by defendant's said failure.

Sixteenth. The Court erred in holding that the failure of defendant to provide some room, receptacle or other place, in which to safely care for, guard or protect under lock and key, or other secure fastening, the United States mail-sacks containing mail matter in course of transmission through the United States mails, during the night, while such mail was in the care or custody of defendant, between the time of its arrival at defendant's station at Harvey, and the time of the delivery of said mail, on the following morning, by de-

7 fendant or its employee, to the Post Master or Post Mistress at the town of Harvey, together with the failure of defendant to provide some competent person, duly sworn into the United States Postal service, to efficiently watch, guard and protect said United States mail-sacks, under the circumstances above set forth, did not, in connection with all

the other facts alleged in the complaint, constitute negligence on the part of defendant for which defendant was responsible to the German State Bank as the owner of a registered package lost by reason thereof, to the extent of the loss occasioned by defendant's said failure.

Seventeenth. The Court erred in refusing to hold that defendant, while carrying the United States mails, under the statutes of the United States and the regulations established by and notification from the Post Office Department of the United States, for a compensation paid or to be paid to defendant by the United States, was under obligation to provide a safe place or receptacle, and to provide a competent person, duly sworn into the United States Postal service, to have the custody of said mail-sack, in order to keep safely the United States mail-sacks delivered to defendant or its employees, by the Postal clerk on defendant's postal car, at defendant's station at Harvey, for safe keeping during the night, and for subsequent tranmission to the Post Office at the town of Harvery, the distance from defendant's station to the Post office being less than eighty rods, and the Court further erred in holding that defendant was not liable to the German State Bank as the owner thereof, for the loss of a registered package contained in such mail-sack, which said loss was caused or occasioned by defendant's negligence in failing to provide such safe place or receptacle for the care and custody of said mail-sack and its contents, and in failing to provide an efficient and reliable employee to guard and protect such mail-sack and its contents, while in defendant's possession during the night in question, after the receipt of such mail-sack by defendant, and prior to its delivery at the Post Office in said town of Harvey.

8 Eighteenth. The Court erred in refusing to hold that, as several acts of negligence, for which defendant is responsible, are alleged in the complaint, it was not incumbent upon plaintiff to allege which one particular act of negligence led to or caused the loss, or to allege or prove what particular person got the registered package in question.

Nineteenth. The Court erred in refusing to hold that the Bankers Mutual Casualty Company, the substituted plaintiff, was, by operation of law, subrogated to all the rights of the German State Bank, the original owner of said registered package, including the right to maintain this action against defendant for the loss or damages arising from the loss of said registered package, through the negligence of defendant and defendant's employee, or either of them, while said registered package was in the custody of defendant, in course

of transmission through the United States mail and prior to the delivery thereof to the Post Master or Post Mistress at Harvey.

Twentieth. The Court erred in refusing to hold that under and by virtue of the provisions of the clause, on the subject of subrogation, contained in the policy of insurance issued by the Bankers Mutual Casualty Company to the German State Bank, this plaintiff was subrogated to all the rights of the original owner in and to said registered package, including the right to maintain this action for the loss of said registered package, caused by the negligence of defendant, and its employees, or either of them, while said package was in defendant's custody in course of transmission through the United States mails.

Twenty-first. The Court erred in refusing to hold that the German State Bank, the original owner of the registered package in question, had, in writing, duly assigned to this substituted plaintiff all of its right, title and interest in and to the registered package in question, including the right to maintain this action, for the loss of such registered package
9 through the negligence of defendant and its employee, or either of them, while in course of transmission through the United States mail.

Wherefore, this plaintiff prays that the said order and said final judgment be reversed, with all the costs of this suit.

January 10th, A. D. 1902.

H. F. DALE,
GEO. W. BOWEN and
HENRY CONLIN,
Attorneys for Plaintiff and Petitioner.

10 United States Circuit Court, District of Minnesota, Fourth Division.

Bankers Mutual Casualty Company, Plaintiff,

vs.

The Minneapolis, St. Paul and Sault Sainte Marie Railway Company, Defendant.

Petition for Writ of Error.

To the Honorable, the Circuit Court of the United States for the District of Minnesota, Fourth Division:

Your petitioner, the Bankers Mutual Casualty Company, would respectfully represent and show that in the above entitled cause pending in the United States Circuit Court in and for the District of Minnesota, Fourth Division, there was signed at the September Term, A. D. 1901, of said Court under the

date of on or about December 20, A. D. 1901, a final entry or judgment, and the same was filed for record on or about January 8, A. D. 1902, in favor of the said defendant and against this plaintiff, dismissing the complaint of the plaintiff on the merits and adjudging as against said plaintiff the costs of said action, greatly to the injury of your petitioner, and which said judgment and the proceedings prior thereto are erroneous and inequitable in many respects, for the reasons specified in the assignment of errors which is filed herewith, and plaintiff prays that this writ of error may be allowed, and that an order be made fixing the amount of security which the plaintiff shall give and furnish upon said writ of error, and petitioner prays that a transcript of the record, proceedings and papers upon which judgment was rendered duly authenticated, may be sent to the United States Circuit Court of Appeals of the Eighth Circuit in the time and manner provided by law.

Dated this 10th day of January, A. D. 1902.

H. F. DALE,
GEO. W. BOWEN and
HENRY CONLIN,
Attorney for Plff. and Petitioner.

10½ And now on this day, the petition of plaintiff in the above entitled cause for the allowance of a writ of error is hereby granted, and it is ordered that a writ of error issue as prayed therein, and that the amount of bond on said writ of error be, and hereby is, fixed at Five Hundred Dollars ($500.00).

Dated this 20th day of January, A. D. 1902.

WM. LOCHREN, Judge.

11 United States of America—ss.

The President of the United States, to the Honorable the Judges of the Circuit Court of the United States for the District of Minnesota—Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court before you, at the September Term, 1901, thereof, between the Bankers Mutual Casualty Company, plaintiff, and The Minneapolis, St. Paul and Sault Sainte Marie Railway Company, Defendant, a manifest error hath happened, to the great damage of the said Bankers Mutual Casualty Company as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things

concerning the same, to the United States Circuit Court of Appeals for the Eighth Circuit, together with this writ so that you have the said record and proceedings aforesaid, at the City of St. Louis, Missouri, and filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Eighth Circuit, on or before the 21st day of March, 1902, to the end that the record and proceedings aforesaid being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws, and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 20th day of January, in the year of our Lord one thousand nine hundred and two. Issued at my office in the City of Minneapolis, with the seal of the Circuit Court of the United States for the District of Minnesota, Fourth Division, dated as aforesaid.

Seal
U. S. Circuit Court
Dist. of Minnesota,
Fourth Division.

HENRY D. LANG,
Clerk Circuit Court United States, District of Minnesota, Fourth Division.
By George F. Hitchcock, Jr., Deputy.

Allowed by;
WM. LOCHREN, Judge.

Ent. No. 509. United States Circuit Court, District of Minnesota, Fourth Div. Bankers Mutual Casualty Company vs. The Minneapolis, St. Paul & Sault Sainte Marie Railway Co. Writ of Error to the Circuit Court of the United States for the District of Minnesota, Fourth Division. Filed January 22, 1902, Henry D. Lang, Clerk. By Geo. F. Hitchcock, Jr., Deputy.

12 United States Circuit Court, District of Minnesota, Fourth Division.

Bankers Mutual Casualty Company, Plaintiff,
vs.
The Minneapolis, St. Paul and Sault Sainte Marie Railway Company, Defendant.

Cost Bond on Writ of Error.

Know All Men by These Presents:

That we, Bankers Mutual Casualty Company as principal, and United States Fidelity & Guaranty Company as surety, are held and firmly bound unto the Minneapolis, St. Paul and Sault Sainte Marie Railway Company in the full and just sum of Five Hundred Dollars ($500.00) to be paid to the said The Minneapolis, St. Paul and Sault Sainte Marie Railway Company, its successors or assigns: To which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally by these presents, sealed with our seals and dated this 10th day of January, in the year of our Lord one thousand nine hundred and two.

Whereas, lately at the September Term, A. D. 1901, of the Circuit Court of the United States for the District of Minnesota, Fourth Division, in a suit pending in said Court between the Bankers Mutual Casualty Company, a corporation and citizen of the State of Iowa, substituted as plaintiff, and the Minneapolis, St. Paul and Sault Sainte Marie Railway Company, defendant, a final judgment was rendered on or about the 20th day of December, A. D. 1901, and entered of record on or about January 8, A. D. 1902, in favor of the said defendant and against the said plaintiff and for the costs of said suit, and the Bankers Mutual Casualty Company, plaintiff therein, has obtained a writ of error of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the defendant The Minneapolis, St. Paul and Sault Sainte Marie Railway Company, citing and admonishing it, the said defendant, to be and appear in the United States Circuit Court
13 of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty (60) days from and after the date of said citation.

Now, the condition of the above obligation is such, that if the said Bankers Mutual Casualty Company shall prosecute said writ of error to effect, and answer all damages and costs

if said plaintiff fail to make goog its plea, then the above obligation to be void, also to remain in full force and virtue.

BANKERS MUTUAL CASUALTY COMPANY,
Principal.
By A. U. Quint, Treasurer.
THE UNITED STATES FIDELITY &
GUARANTY COMPANY, Surety, [Seal]
By Porterfield K. Witmer,
General Agent.

Sealed and delivered in the presence of,

.....
.....

By J. D. Wallingford,
Attorney in fact.

Approved this 20 day of January, A. D. 1902.

WM. LOCHREN,
Judge of the Circuit Court of the United States, District of Minnesota.

United States of America,
Southern District of Iowa,
Central Division—ss.

I, E. R. Mason, Clerk of the Circuit Court of the United States for the Southern District of Iowa, Central Division, do hereby certify that the surety in the foregoing Bond is good and sufficient and that I would accept and approve said Bond if presented to me for official action.

Dated at Des Moines, Iowa, this 14 day of January, A. D. 1902.

E. R. MASON,
Clerk of the Circuit Court of the United States, Southern District of Iowa.

[Seal U. S. Circuit Court.]

14 The United States of America, to The Minneapolis, St. Paul and Sault Sainte Marie Railway Company—Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the day this Citation bears date, pursuant to a writ of error filed in the Clerk's office of the Circuit Court of the United States for the District of Minnesota, Fourth Division, wherein the Bankers Mutual Casualty Company is Plaintiff in Error, and you are Defendant in Error, to show cause, if any there be, why the judgment rendered against the said Plaintiff in Error, as in said writ of error mentioned, should not be corrected, and

why speedy justice should not be done the parties in that behalf.

Witness, the Honorable William Lochren, Judge of the Circuit Court of the United States for the District of Minnesota, this 20th day of January in the year of our Lord one thousand nine hundred and two.

WM. LOCHREN, Judge.

Ent. No. 509. United States Circuit Court, District of Minnesota, Fourth Div. Bankers Mutual Casualty Company, vs. The Minneapolis, St. Paul & Sault Sainte Marie Ry. Co. Citation on Writ of Error. Service of the within citation is hereby admitted, this 22nd day of January, 1902. Alfred H. Bright, Defendant's Attorney. Filed January 22, 1902. Henry D. Lang, Clerk. By Geo. F. Hitchcock, Jr., Deputy.

15 United States Circuit Court, District of Minnesota, Fourth Division.

German State Bank, Plaintiff,

vs.

Minneapolis, St. Paul and Sault Ste. Marie Railway Company, Defendant.

Pleas before the Honorable the Judges of the Circuit Court of the United States of America for the District of Minnesota, for the September Term, A. D. 1901, of said Court, held in the city of Minneapolis in said district in the year 1901.

District of Minnesota—ss.

Be it remembered that on this seventeenth day of June, A. D. 1901, came the plaintiff above named by Dale & Allen and Geo. W. Bowen, its attorneys, and filed in the Clerk's office of said Court his complaint herein in the words and figures following, to wit:

16 In the United States Circuit Court, Fourth District of Minnesota.

German State Bank, a Corporation and Citizen of the State of North Dakota, Plaintiff,

vs.

Minneapolis, Saint Paul & Sault Sainte Marie Railway Company a Corporation and Citizen of the State of Minnesota, Defendant.

Complaint.

To the Honorable Judges of the United States Circuit Court, for the Fourth District of Minnesota:

Plaintiff brings this action for the use and benefit of the Bankers Mutual Casualty Company, a corporation and Citizen

of the State of Iowa, and for cause of action against the defendant alleges:

That the German State Bank is a corporation duly organized under the laws of the State of North Dakota, and a citizen of said state; with its principal place of business at the town of Harvey, in said State, engaged in a general banking business at said town, and said bank was engaged in said business on or about the 10th day of November, A. D. 1900.

That the Bankers Mutual Casualty Company is a corporation duly organized under the laws of the state of Iowa, and a citizen of said State, with its principal place of business at Des Moines in said State, engaged in the business of insuring banks against loss from robbery and burglary, including packages of money in course of transmission from place to place, while regularly carried in the United States registered mails.

That defendant is a corporation duly organized under the laws of the State of Minnesota and a citizen of said state, with its principal place of business at Minneapolis in said State, engaged in operating a line of railroad situated in the
17 States of Minnesota and North Dakota, and in the usual course of its business carrying the United States mails under the statutes and laws of the United States.

That on or about the 10th day of November, A. D. 1900, the Metropolitan Bank, a corporation organized under the laws of the State of Minnesota, was engaged in transacting a general banking business in the city of Minneapolis, in said State, and on or about said date, said bank deposited in the United States Mails, at Minneapolis, in said State, a package containing lawful money of the United States, commonly known and called currency, of the actual cash value of Three Thousand Dollars ($3,000.00), in an envelope properly addressed to the German State Bank, at Harvey, North Dakota, and prepaid thereon the postage and registration fee, and said package was thereupon duly registered by the Post Master of said post office. That from and after the time of depositing said package in said post office at Minneapolis, said package and its contents was the property of said German State Bank.

That said Registered package was covered by insurance and indemnity against loss while in transit through the United States mails from Minneapolis to said Harvey, under a policy of insurance issued by said Bankers Mutual Casualty Company, said insurance being for the use and benefit of said German State Bank. That a true copy of said policy is hereby attached as part hereof, and marked Exhibit "A."

That on or about November 10th, A. D. 1900, and while said package was in good safety and prior to the departure of the train carrying said registered package, said Metropolitan Bank deposited in the United States Mails, at the post office in said Minneapolis, a letter of advice, properly addressed to the Bankers Mutual Casualty Company at Des Moines, Iowa, with postage thereon prepaid; that said letter of advice notified said Bankers Mutual Casualty Company, of the shipment by said Metropolitan Bank, of the sum of Three Thousand Dollars to said German State Bank of Harvey, and upon said mailing of said letter of advice, the contract of insurance and indemnity of said Registered Package of currency immediately
18 attached thereto and became a valid and complete contract of insurance and indemnity by the said Bankers Mutual Casualty Company, in favor of said German State Bank.

That in the regular course of transmission of the United States mails, said registered package was duly delivered to defendant railroad company, to be carried by it, and was so carried to said Town of Harvey, North Dakota, and was then delivered to defendant's night station-agent or night operator, and said registered package was then and there stolen.

That the theft of said Registered Package, as above set forth, was caused by the negligence of defendant in not properly taking care of and protecting said registered package of currency; said negligence of said defendant being as follows, to wit:

That from and after the time of the depositing of the mail sack containing said currency in defendant's mail car at Minneapolis, Minnesota, for the purpose of transit and transportation for delivery at Harvey, North Dakota, the same was under the exclusive care, custody and control of the Postal Clerks, regularly employed and having charge of the mail in said car; that the mail sack containing said Registered Package, from and after the time of its delivery in said postal car, to the proper postal clerks therein, up to and including the delivery of said mail sack at Harvey, North Dakota, was in the exclusive care, custody and control of the said postal clerks or authorities.

That when said train and postal car arrived at Harvey, North Dakota, the postal clerk delivered said mail sack, duly locked, together with said registered package of currency therein contained, to the night station agent, or night operator of the defendant at said Harvey, that said night station agent, or operator, was not sworn as an official or employee of the post office department, as required by law, but was then and

there employed and duly authorized by the defendant to receive and take charge of the mail sack, containing said package of currency, and deposit same in defendant's depot, at Harvey, North Dakota, and did so receive, take charge of and deposit said mail sack.

19 That Section 713 of the postal laws and regulations of the United States of the year 1893, which was in force at the time of shipment of said registered package is in words and figures as follows:

"The railroad company will also be required to take the mails from and deliver them into all intermediate post offices and postal stations located not more than 80 rods from the nearest railroad station at which the company has an agent or other representative employed."

That said post office at Harvey was an intermediate post office and was located not more than 80 rods from defendant's railroad station at Harvey.

That under said postal regulation it was the duty of said defendant, through its night agent, or operator, or other representative employed by defendant, to safely care for and guard said mail sack and its contents during the night, and safely deliver the same at the post office to the post master in said town of Harvey, North Dakota.

That said night station agent, or night operator, after receiving said mail sack, containing said registered package, did negligently leave said depot, and did absent himself therefrom for a period of time to this plaintiff unknown, and thereby defendant failed to safely keep and care for said mail sack and its contents.

That one ..... Soule was then the road master or foreman of said defendant at said town of Harvey, and one of its employees and servants, but was not sworn in as an official or employee of the Post office department, as required by law.

That said Soule did previously unlawfully obtain and cause to be made, a key to said mail sack, and did enter said depot, and find said mail sack, which had previously been deposited therein, and did unlock the same, and abstract and take therefrom the aforesaid registered package, containing said Three Thousand Dollars ($3,000.00) in currency and did unlawfully convert the same to his use and benefit, and the same has never been delivered or returned to this plaintiff, or to the

20 Metropolitan Bank of Minneapolis, or to the Bankers Mutual Casualty Company, or anyone for them. That said Soule had access to the office or room in defend-

ant's said station or depot, where said mail sack was deposited, and was permitted to go and come therefrom, at will, all of which was well known to defendant.

That in consequence of said negligence of the defendant, and the consequent loss of said package, as herein stated, said Bankers Mutual Casualty Company became indebted to said German State Bank of Harvey under its said policy of insurance, and was compelled to and did pay said German State Bank the full amount of the loss so sustained by it, to wit: the sum of Three Thousand Dollars ($3,000.00) in good and lawful money of the United States; the same being the amount of insurance or indemnity, held by said German State Bank, and covered by said policy of insurance. That written demand has been made by said German State Bank and said Bankers Mutual Casualty Company upon the defendant, for repayment to them of said sum of money, a copy of which written demand is hereto attached, as part hereof, and marked Exhibit "B," which payment the defendants have refused and still refuse to make.

That by reason of said facts, plaintiff alleges, that plaintiff, for the use and benefit of said Bankers Mutual Casualty Company, has been damaged in the sum of Three Thousand Dollars ($3,000.00), with interest thereon at the rate of six per cent (6) per annum, from the 10th day of November, A. D. 1900, and said German State Bank hereby says and states that whatever recovery may be had, under and by virtue of the matters herein set forth, shall be for the use and benefit of its insurer, said Bankers Mutual Casualty Company, and said amount when collected and received by said German State Bank, shall inure to the benefit of said Company, and the same shall be in full settlement of all claims, of whatever kind or nature, arising out of the facts set forth in this petition.

Wherefore: plaintiff prays for judgment against defendant for the use and benefit of said Bankers Mutual Casualty Company in said sum of Three Thousand Dollars ($3,000.00)
21 with Six per cent (6) interest thereon from and after November 10th, 1900, and for the costs of this action; and that defendant be duly summoned to appear and answer this complaint, as required by law and the rules of this Court.

GEO. W. BOWEN and
DALE & ALLEN,
Attorneys for Plaintiff.

Geo. W. Bowen, of Carroll, Iowa,
Dale & Allen, of Des Moines, Iowa,
Of Counsel for Plaintiff.

State of Iowa,
Polk County—ss.

A. U. Quint, being first duly sworn, on oath deposes and says: That he is treasurer and Active Manager of the Bankers Mutual Casualty Company, named on the foregoing petition, and for whose use and benefit the foregoing suit is prosecuted; that he has read and knows the contents of the foregoing petition: that he has personal knowledge of the insurance of said German State Bank by said Bankers Mutual Casualty Company; that he has information, which he believes to be true as to all other facts set forth in said petition, and that the matters and things set forth in said petition are true as he verily believes. A. U. QUINT,

Subscribed in my presence and sworn to before me by A. U. Quint, above named, at Des Moines, Iowa, this 14 day of June, A. D. 1901.

[Seal] WILLIAM M. REX,
Notary Public, in and for Polk County, Iowa.

22 EXHIBIT A-1. (2464)

Bankers Mutual
Casualty Company.
(Shipping Policy)
Des Moines, Iowa,

By this policy of Insurance does insure German State Bank, Harvey, N. D. For account of themselves, In case of loss to be paid at Des Moines, Ia.; in funds current to German State Bank, Harvey, N. D.

On Currency, Bonds, Coupons, Certificates of Stock or other securities or valuables.

To cover risks of transportation from the time of deposit and registration at the Post Office, or delivery to an Express Company's Office until delivered at the place of address.

To cover shipments by the United States Registered Mail, or by Express within the United States, or between the United States and the Dominion of Canada, Kingdom of Great Britain and Ireland, or the Continent of Europe. Whether the aggregate sum exceed the amount of the subscription hereon or not, the premium on the excess of such subscription to be paid from time to time as soon as the amount of the same shall be known to the assured. This company having been paid the consideration for this insurance by the assured at and after the rate of on the subscribed amount on account.

Subject to the Following Conditions:

First. No risk to be considered as insured hereon until a letter addressed to the Company at Des Moines, Iowa, detailing particulars of mailing with description of the property and the amount to be insured, is deposited in the Post Office at the place of mailing, which must be done while the property is in good safety and in all cases prior to the departure of the mail or express which carries the property insured.

Second. The perils and risks assumed by the Bankers Mutual Casualty Company under this insurance are those of transportation, such as fires, floods, thefts, collisions of trains, and all detriment and misfortune, as well as those by water, that may come to the property hereby insured.

23 The risk to attach immediately following the mailing or shipping by express of the package and shall so continue until delivered to the address.

Third. This insurance is not to cover more than $10,000 by any one mail or express at one time.

Fourth. That all property insured under this policy shall be enclosed in a strong envelope or wrapper, well secured and in all cases sealed with wax.

Fifth. That the property insured under this policy shall be given its true value, and in case of under valuation of the property insured, no claim to be made for any amount above that originally stated in the letter of advice.

Sixth. That it is understood and agreed that this policy of insurance does not cover the loss by theft committed by one of the employes of the insured, or of the person or persons to whom or by whom the property was mailed.

Seventh. In case of loss, such loss to be paid within thirty days after proofs of loss and proof of interest; and in case of loss or misfortune, it shall be lawful and necessary to and for the insured to sue, labor and travel for, in and about the defense, safeguard and recovery of the property without prejudice to this insurance; and upon the payment of any loss under this policy, the assured or assigns, in consideration thereof, agree to convey to the said Bankers Mutual Casualty Company the unincumbered title in the property lost as absolute owners thereof, and to take all necessary measures in behalf, at the risk and expense, of the said Bankers Mutual Casualty Company, for the recovery, reissue or replacement of said property, where possible.

Eighth. It is warranted by the assured that the packing and sealing of the package containing the property insured hereunder, shall be witnessed by two adults, one of whom shall have charge of the same until deposited and registered at the Post Office, or delivered to the Express Company.

24 Ninth. It is agreed that no suit or action against this Company for the recovery of any claim by virtue of this policy shall be sustained in any Court of Law and Equity unless such suit or action shall be commenced within six months next after the date of mailing or shipment of the package claimed to be lost, and that the lapse of said period shall be a bar to any such suit or action.

Tenth. Warranted by the assured free from claim on account of capture, seizure, detention or destruction, by or arising from any belligerent nation, or by or from any officer. civil or military, or other person claiming to act in their name or under their authority or in their behalf.

Eleventh. In all cases of loss when it shall be claimed by the Bankers Mutual Casualty Company that the carrier or other party in whose custody the property may be at the time of such loss, is or may be liable, then the assured shall, at the request of this Company or its agents, assign and subrogate all their rights and claims to this Company, to an amount not exceeding the sum paid by said Company.

Twelfth. Warranted free from claim in any wise inuring to the benefit of carrier.

Thirteenth. This policy may be canceled by either party giving the other thirty days' notice in writing.

Fourteenth. Rates of Premium as agreed, and premiums due and payable on the last day of each month.

In witness whereof, the Bankers Mutual Casualty Company has caused this Policy to be executed at the city of Des-Moines, Ia., this 7 day of March, 1898, but this policy shall not be binding upon the Company until countersigned by a duly authorized representative of the Company.

J. M. WOODWORTH,
Secretary.

CHAS. P. HANNAN,
President.

Countersigned:
G. N. Sherman,
Assistant Secretary.

25 EXHIBIT A-2.

Rates of Insurance on Registered Mail Shipments, where the entire line of transportation is by railroad between any points in the State of North Dakota and the following Cities and any town in the States named. To be attached to and made a part of policy No. 2464 issued by the Bankers Mutual Casualty Company.

Dated Mch. 31, 1898.

Per $1000.	Securities.	Currency.	Currency. Not over 500.	Currency. Not over 200.
St. Louis, Mo.; Kansas City, Mo.....	35	60	50	40
St. Paul, Minn.; Minneapolis, Minn.....	15	20	15	10
New York City, N. Y.; Boston, Mass.....	45	75	60	50
Chicago, Ill.; Omaha, Neb.	30	50	40	30
All points to and from the New England States...	45	75	60	50
Between all points in North Dakota.....	15	20	15	10

Banks shipping currency or securities out of the States in which they are located shall be allowed the State rate within 100 miles.

26 EXHIBIT "B."

To the Minneapolis, St. Paul and Sault Sainte Marie Railroad Company, Thomas Lowry, President, C. F. Clermont, Secretary and Treasurer, and A. H. Bright, General Solicitor:

You are hereby notified, that we demand you for immediate settlement, and the payment to us of $3,000.00, being the amount of our loss, occasioned by the stealing of a package of currency amounting to $3,000.00, which was sent by the Metropolitan Bank of Minneapolis, [Minneapolis] Minnesota, to the German State Bank of Harvey, North Dakota, said loss being occasioned by your negligence, and the negligence of your employees, in not taking proper care thereof, and allowing same to be lost or stolen, same having been sent by express, and carried over your road, and unless we receive immediate settlement for said amount, and the payment of said sum of $3,000.00 we shall commence suit against you for the recovery thereof.

Dated this 12th day of February, 1901.

A. U. QUINT,

For German State Bank and for Bankers Mutual Casualty Co.

27 And on June 17th, 1901, the following praecipe for Summons was filed of record in said cause, viz:

28 Circuit Court of the United States, District of Minnesota, Fourth Division.

German State Bank,
vs.
Minneapolis, St. Paul & Sault Ste. Marie Ry. Co.

Praecipe for Summons.

To the Clerk of Above-Named Court:
Please issue Summons for the Defendant in the above entitled action.

DALE & ALLEN and
GEO. W. BOWEN,
Attys. for Plaintiff.

29 And on the same day the following summons was issued, the same was returned by the Marshal and filed of record in said cause on the twentieth day of June, A. D. 1901.

30 United States of America.
District of Minnesota,
Fourth Division—ss.

In the Circuit Court of the United States for the District of Minnesota:

German State Bank, a corporation and Citizen of the State of North Dakota, Plaintiff,
against
Minneapolis, St. Paul and Sault Ste. Marie Railway Company, a corporation and citizen of the State of Minnesota, Defendant.

Summons.

The President of the United States of America, to the Defendant above named—Greeting:

You are hereby summoned and required to answer the complaint in this action, which has been filed in the office of the Clerk of this Court, in Minneapolis, County of Hennepin, and State of Minnesota, and file your answer in said Clerk's office, within Twenty days after the service hereof, excluding the day of such service, and if you fail to answer the complaint as aforesaid, the plaintiff will take judgment against you for the sum of three thousand dollars ($3000.00) with six per cent

interest thereon from and after November 10th, 1900, and for the costs of this action.

For the Marshal of the District of Minnesota to excute.

Witness: The Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 17th day of June, A. D. 1901. Issued at my office in the City of Minneapolis, under the seal of said Circuit Court, the day and year last aforesaid.

[Seal U. S. Circuit Court.]

HENRY D. LANG, Clerk,
By Robert C. Mabey, Deputy.

Geo. W. Bowen and Dale & Allen,
Plaintiff's Attorneys.

31 Return on Service of Writ.

United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed Summons on the therein-named Minneapolis, St. Paul and Sault Ste. Marie Railway Company, a corporation, by handing to and leaving a true and correct copy thereof with Charles F. Clement, Secretary of said Corporation, personally at Minneapolis in said District on the 18th day of June, A. D. 1901.

WILLIAM H. GRIMSHAW,
U. S. Marshal.

32 And on July 8, 1901, the following answer was filed of record in said cause, viz:

33 In the United States Circuit Court, Fourth District of Minnesota.

German State Bank, a corporation and citizen of the State of North Dakota, Plaintiff,

vs.

Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Defendant.

The defendant, answering the Complaint in the above entitled action,

1. Alleges that the plaintiff therein has no interest whatever in said action nor in the claim upon which the same is based; that it has no right to institute said action for the benefit of the Bankers Mutual Casualty Company referred to in said Complaint.

2. Further answering said Complaint, the defendant admits that the plaintiff is a corporation duly organized under the laws of the State of North Dakota, with its principal place of business in the Town of Harvey, in said State, and that it was engaged in a general banking business at the times mentioned in the Complaint.

Admits that the Bankers Mutual Casualty Company is a corporation duly organized under the laws of the State of Iowa, with its principal place of business at Des Moines in said State, and that it was engaged in the business set forth in said Complaint during the times therein mentioned.

Admits that the defendant is a corporation duly organized under the laws of the State of Minnesota, and is engaged in operating a line of railroad in the States of Minnesota and North Dakota and as such carried the United States mails.

Admits that the demand referred to in the Complaint and attached thereto as Exhibit "B" was made upon the defendant at the time alleged and that it refused payment on the same.

34 3. As to whether the Metropolitan Bank of the City of Minneapolis, sent the package of money by registered mail, as alleged in said Complaint, or whether the same was insured against loss as therein stated, or whether any such package was handled through the United States mail and by the mail clerks as therein stated, or as to whether the same was in the mail sack delivered at said Harvey at the time in question, or whether the same was stolen from said sack or not as therein stated, the defendant has no knowledge or information sufficient to form a belief and therefore denies the allegations in said Complaint contained relative to said matters.

4. Except as herein admitted, qualified or denied, the defendant denies each and every allegation, matter and thing in said complaint contained.

5. Wherefore, the defendant demands judgment that said action be dismissed and for its costs and disbursements herein.

ALFRED H. BRIGHT,
Attorney for Defendant.

35 And on July 9th, 1901, the following notice of appearance was filed of record in said cause, viz:

36 In the Circuit Court of the United States, District of Minnesota, Fourth Division.

German State Bank of Harvey, N. D., Plaintiff,
vs.
The Minneapolis, St. Paul & Sault Ste. Marue Ry. Co., Defendant.

To the Clerk of said Court:
Please enter my apearance in the above entitled cause as one of counsel for the plaintiff.

HENRY CONLIN,
21 Nat'l Ger. Am. Bank Bldg., St. Paul, Minn.
July 9th, 1901.

37 And on July 18th, 1901, the following demurrer to answer was filed of record in said cause, viz:

38 In the United States Circuit Court, Fourth District of Minnesota.

German State Bank, a corporation, and citizen of the State of North Dakota, Plaintiff,
vs.
Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Defendant.

Comes now the plaintiff in the above entitled action and demurs to so much of the answer of the defendant herein as is contained in paragraph numbered one of said answer and to each and every part of said answer so far as the same relates to the separate defense pleaded in said paragraph one of said answer upon the ground and for the reason that the matters and things alleged in said paragraph one of said answer do not constitute a defense to said action.

Dated July 18th, 1901.

GEORGE W. BOWEN,
HENRY CONLIN,
Attorneys for Plaintiff.

DALE & ALLEN,
Of Counsel.

I hereby certify that in my opinion the foregoing demurrer is well founded in law.

HENRY CONLIN,
Attorney for plff.

38½ And on August 31st, 1901, the following proceedings of court were entered of record in said cause:

38½ United States Circuit Court for the District of Minnesota, Fourth Division.

Term Minutes, March Term, A. D. 1901, August 31st, 1901.

Saturday Morning.

Court opened pursuant to adjournment.

Present: Honorable William Lochren, Judge; William H. Grimshaw, U. S. Marshal; Henry D. Lang, Clerk; by Geo. F. Hitchcock, Jr., Deputy.

German State Bank of Harvey, N. D.,
vs.
Minneapolis, St. Paul & Sault Ste. Marie Railway Company,

The above entitled cause coming on to be heard upon the demurrer of the defendant to the complaint herein, the answer herein and the demurrer thereto having been withdrawn by consent of counsel for both parties made in open court, Mr. Alfred H. Bright is heard on behalf of the defendant in support of said demurrer, and Messrs. H. F. Dale, G. W. Bowen and Henry Conlin on behalf of the plaintiff and in opposition thereto, and thereupon said cause is duly submitted and by the Court taken under advisement.

39 And on September 18, 1901, the following demurrer to the complaint was filed of record in the said cause, viz:

40 United States Circuit Court, District of Minnesota, Fourth Division.

German State Bank, a corporation and citizen of the state of North Dakota, Plaintiff,
vs.
Minneapolis, St. Paul & Sault Ste. Marie Railway Company, a Corporation and Citizen of the State of Minnesota, Defendant.

Demurrer.

The above named defendant by Alfred H. Bright its attorney, demurs to the Complaint of the plaintiff in this action and specifies as grounds of objection thereto that it appears upon the face of the said Complaint,

1. That the same does not state facts sufficient to constitute a cause of action;

2. That there is a defect of parties plaintiff in this action in this, to wit, that it appears in said Complaint that the plaintiff therein has no interest whatever in said action nor in the claim

upon which the same is based; that if any cause of action exists on the facts stated, the real party in interest is the Bankers' Mutual Casualty Company referred to in said Complaint.

ALFRED H. BRIGHT,
Attorney for Defendant.

41 And on September 18th, 1901, the following order sustaining demurrer was filed of record in said cause. to-wit.

42 United States Circuit Court, District of Minnesota,
Fourth Division.

German State Bank
vs.
Minneapolis, St. Paul and Sault Ste. Marie Railway Co.

Decision.

This case is presented by demurrer to the complaint, which alleges in substance that on Nov. 10, 1900, the Metropolitan Bank deposited in the United States Mail at Minneapolis, in a pre-paid and duly registered letter or package, addressed to the plaintiff at Harvey, North Dakota, the sum of $3000 in currency, which therefore became the property of the plaintiff; who was then insured against the risks of transportation of such money by the Bankers Mutual Casualty Company of Des Moines, Iowa, under a policy of insurance, a copy of which is attached to the Complaint. The mail sack containing said package was carried in a mail car in defendants' railroad from Minneapolis to Harvey, under the exclusive control of Postal Clerks, who delivered said mail sack, duly locked and containing said package to defendants night station agent at said Harvey, who was not an employee of the Post Office Department, and whose duty, on behalf of defendant, it was to safely care for and guard said mail sack and its contents during the night, and safely deliver the same to the postmaster at the Harvey post office, which was within eighty rods of the railway station.

The night station agent deposited the mail sack in a room in the depot, and absented himself therefrom for a time, during which one Soule, a road master or foreman of defendant, entered the room, and with a key which he had caused to be made, unlocked the mail sack, and took said package, and stole the money. The Bankers Casualty Company, pursuant to its contract of insurance, has paid said sum of $3000 to the plaintiff, who brings this suit for the benefit of the in-
43 surer.

I. The Federal Government has from the first, assumed the absolute and exclusive control and performance of the postal service of the country, under the express provision of the Constitution authorizing Congress to establish post offices and post roads. The function so exercised is governmental, as it is calculated to produce revenue, more or less as the policy of the government may dictate; and it is intended to minister to the general welfare, by furnishing to all persons, and between all parts of the country, and reaching to other countries, means of communication, as rapid and safe as can be devised; and protected by the safeguards provided by law.

The government prescribes what matter shall be mailable, and the rates of postage, and the manner of payment of the same. These matters are regulated by law and are not left open for negotiation or contract. No idea of contract has any place in the scheme. The government tolerates no competitor in the exercise of this function, but forbids under penalties, the sending or carrying of sealed letters otherwise than in its mails. It permits but does not compel the sending of packages, which may contain articles of value, in its mails; but if a person avails himself of this permission the package enters the mail and is entitled to the same care as any letter and no greater. The provision for registration applies equally to letters and other packages, and only aids in tracing their course and carriage. The government, itself, receives, handles, assorts and carries the mails, and delivers the same as addressed. The postal officials of whatever grade, and carriers of whatever kind, are the servants of the government—the hands which it employs in the performance of its functions. With the exceptions presently to be mentioned, I think it may be safely asserted that these servants are not in privity with and owe no duty to any one except the government, to whom their fidelity is sought to be assured by provisions of the postal laws, penal and otherwise.

The exceptions are the cases where the duty of such servant, whether postmaster, clerk or distributing carrier, requires him to assume to do an act personal to a known or designated individual; such as receiving from him a letter or package
44 to be placed in the mail, in which case he would owe him the duty of using ordinary care to place it in the mail or in the proper receptacle for mailing; or if such servant should receive through the mail a letter or package which it became his duty to deliver to the person addressed, he would owe that person the duty of using ordinary care in making safe and prompt delivery of the same.

A Railway company carrying the mails, does not assume as to them, any of the duties or responsibilities of a common car-

rier. No one but the government can require or receive such service, and the duties and responsibilities of such railway carrier of mails are measured by the terms of the contract, and by the provisions of the postal laws and regulations. The mails are not in the care, custody or control of the railway company during the carriage, but under exclusive control of the railway postal clerks, in separate cars or compartments, fitted especially for that service. As to the safety of the persons of such clerks the railway company assumes the same duty which rests upon it respecting other persons lawfully being carried on its trains. But as to the mail itself it has no duty except what it owes the government, its employer. It has no notice or means of knowledge of the contents of mail sacks; nor as to who has sent or who is entitled to receive the letters or packages. It never was employed by such persons, has no privity with them, and owes to them severally and personally no duty whatever.

Were it otherwise, then when as often happens, cars are wrecked and burned, and the mail destroyed, as the result of negligence for which the railway company is in law responsible, so that recoveries against it are had for personal injuries, and for all destruction of luggage and merchandise, the courts would be burthened with actions to recover for the loss of valuable packages claimed to have been in the mail; affording such opportunity for fictitious claims, as might speedily compel railways to refuse such hazardous employment. The fact that no such litigation has ever arisen is decisive against the claim that a railway company owes any duty to the sender or addressee or owner of the contents of any letter or package contained in the mails, which can be made the basis of an action at law.

As above stated, the law requires that all letters sent from place to place, be sent by the mail. But there is no such requirement in respect to valuable packages; which may lawfully be sent through express companies, or by other responsible carriers. The postal service has become so efficient, speedy and safe, that in view of its cheapness many persons send valuable packages by post, taking the risk themselves, rather than pay more to responsible carriers, who make charges with some reference to the value of the article, and consequent amount of the risk assumed.

2 But if it were conceded that under some circumstances, an action of this kind can be maintained by the owner of a package lost from the mail, against a railway carrier of the mail, no liability can arise under the facts stated in this complaint. If any privity can be imagined as existing between the

railway carrier between distant places and the owner of a package in the closed mail sack, and that the railway company owes such package owner a duty to exercise care in the carriage of that especial package, it would not be that degree of care and of responsibility which rests upon a common carrier, but at most, the reasonable care which an ordinary bailee for hire must exercise in respect to the article which is the subject of the bailment. There is in such case no responsibility if the article is stolen, even by a servant of the bailee, if the bailee has taken and caused to be taken reasonable care under the circumstances.

Under the allegations of the complaint, and upon the theory of the concession suggested, the bailment would not cease until the mail sack containing the package was delivered at the post office, at Harvey; which was within eighty rods of defendants depot. It is alleged that the mail sack was delivered to defendants night station agent, whose duty it was "to safely care for and guard said mail sack and its contents
46 during the night." It must inferred from this, that the mail sack reached that depot too late in the night to be received at the post office before the following morning, and hence must be stored in the depot, as in a warehouse for the night. There is no allegation that it was not put in a safe place in the depot, guarded by such sufficient locks as would be reasonable in such case. The only attempted allegation of negligence is that the night station agent, after receiving the mail sack "did negligently leave said depot, and did absent himself therefrom for a period of time to this plaintiff unknown, and thereby defendant failed to safely keep and care for said mail sack and its contents." As I cannot hold that defendants duty in respect to the mail sack under the circumstances required that the station agent should sit on the mail sack the balance of the night, and keep awake, I think the allegation just quoted fails to charge any negligence.

The remaining allegations are to the effect that one Soule, a road master or foreman of the defendant at Harvey, entered the depot, and with a false key opened the mail sack and stole the package of money. The employment of Soule by the defendant, and the allegation that he had "access to the office or room where said mail sack was deposited, and was permitted to go and come therefrom at will," does not sustain any inference of lack of reasonable care. No facts are stated tending to show that defendant had any reason to regard Soule as other than honest and trustworthy; and the responsible character of his employment indicates that he was so regarded. The allegation that he had access to the room and was "permitted to go and come therefrom at will," with defendant's

knowledge, is too vague and indefinite, and requires too heavy a draft on the imagination to lead me to regard it as a statement that Soule had, with defendants knowledge and consent, such access or permission in the night time, or at any time other than when the occupations of his employment might properly direct him there.

47 The statement of the second ground of demurrer only specifies what may be a separate reason for sustaining the demurrer on the general ground.

The demurrer is sustained with leave to the plaintiff to amend its complaint on or before the November Rule Day.

WM. LOCHREN,
Judge.

48 And on October 30th, 1901, the following stipulation was filed of record in said cause, viz.:

49 In the United States Circuit Court. Fourth District of Minnesota.

The German State Bank of Harvey, North Dakota, Plaintiff,
vs.
The Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Defendant.

It is hereby stipulated between the parties to the above entitled action as follows:

Defendant having demurred to the complaint of the plaintiff, on the ground that said complaint did not state facts sufficient to constitute a cause of action, and on the further ground that the above named plaintiff was not the real party in interest, and the court having sustained said demurrer upon the first of said grounds, with leave to said plaintiff to file an amended complaint on or before November, 1901, rule day of said Court, defendant consents and agrees that plaintiff in filing such amended complaint may substitute the Bankers Mutual Casualty Company, a corporation, of Des Moines, Iowa, as plaintiff, in said action in the place and stead of said German State Bank.

It is further stipulated that the demurrer heretofore interposed by defendant to the original complaint of plaintiff shall stand for and be a demurrer to said amended complaint when said complaint is filed.

Dated October 30th, 1901.

DALE & ALLEN,
GEO. W. BOWEN and
HENRY CONLIN.
Attorneys for Plaintiff.
ALFRED H. BRIGHT,
Attorney for Defendant.

50 And on the same day the following amended and substituted complaint was filed of record in said cause, viz.:

51 In the United States Circuit Court. District of Minnesota. Fourth Division.

Bankers Mutual Casualty Company, a Corporation and Citizen of the State of Iowa, Substituted as Plaintiff in lieu of the German State Bank, Original Plaintiff,

vs.

The Minneapolis, Saint Paul and Sault Ste. Marie Railway Company, a corporation and citizen of the State of Minnesota, Defendant.

Amended and Substituted Complaint.

To the Honorable Judges of the United States Circuit Court, for the Fourth District of Minnesota;

By leave of Court first had and obtained, the Bankers Mutual Casualty Company, heretofore substituted as plaintiff in lieu of the original plaintiff, the German State Bank, of the Town of Harvey in the State of North Dakota, respectfully shows the Court, and as a cause of action againt defendant, alleges as follows, to-wit:

That the Bankers Mutual Casualty Company, during all of the year A. D. 1900, and up to the present time, is and was a corporation, duly organized under the laws of the State of Iowa, and a citizen of said state, with its principal place of business at Des Moines, in said State engaged in the business of insuring banks against loss from robbery and burglary, including the insurance against loss of packages of money, while in the course of transmission from place to place, while regularly carried in the United States registered mails.

That defendant, during all of the year A. D. 1900, and up to the present time, is and was a Corporation, duly organized under the laws of the State of Minnesota and a citizen of said State with its principal place of business at Minneapo-
52 lis, in said State, engaged in operating a line of railroad situated in the States of Minnesota and North Dakota.

That the German State Bank, during all of the year A. D. 1900, and up to the present time, is and was a Corporation, duly organized under the laws of the State of North Dakota, and a citizen of said State; with its principal place of business at the town of Harvey, in said State, engaged in a general banking business at said town.

That during the whole year A. D. 1900, and up to the present time, defendant is and was engaged in carrying the United

States mails between the terminal and intermediate stations located upon and along its said line of railroad, under and by virtue of the Statutes and laws of the United States, and the regulations established by the Postoffice Department of the United States Government and in pursuance of a fixing of the compensation to be paid to defendant by the United States Government for carrying said mails and the person in charge thereof, based upon the last preceding reweighing of said mails and upon notice in writing, in the usual form, from the Second Assistant Postmaster General of the United States, requiring defendaant to carry said mails and the person in charge thereof.

That said depot, at or near the town of Harvey, was an intermediate station on that part of defendant's said line of Railroad within the State of North Dakota, which extends from the Station at Hankinson to the station at Portal, and the Railroad line between said Stations at Hankinson and Portal is designated by and known to the Postoffice Department of the United States, as Railroad Route No. 161,018, being a distance of 344.58 miles, and the compensation fixed by the United States Postoffice Department to be paid annually by the United States to Defendant, during all of the period herein referred to for the carriage of said mails and the person in charge thereof is and was the sum of sixty-four thousand eight hundred and fifteen and 49/100 dollars ($64,815.49) at the rate of $188.10 per mile.

53 That this substituted plaintiff is not in possession of the aforesaid notice to defendant, and is unable to attach to this petition said notice or a true copy thereof.

That during all of the period hereinbefore referred to, there was no contract of any kind between defendant and the United States Government, concerning or providing for the carriage, by defendant, of said mails, or any part thereof, or of the person in charge of said mails, upon or along defendant's said line of railway or any part thereof.

That on or about the 10th day of November, A. D. 1900, the Metropolitan Bank, a corporation organized under the laws of the State of Minnesota, was engaged in transacting a general banking business in the city of Minneapolis, in said State, and on or about said date, said bank deposited in the United States Mails, at Minneapolis, in said State, a package containing lawful money of the United States, commonly known and called currency, of the actual cash value of Three thousand dollars ($3,000.00), in an envelope properly addressed to the German State Bank, at Harvey, North Dakota, and prepaid thereon the postage and registration fee, and said package

was thereupon duly registered by the Post Master of said post-office. That from and after the time of depositing said package in said postoffice at Minneapolis, said package and its contents was the property of said German State Bank.

That said Registered package was covered by insurance and indemnity against loss while in transit through the United States mails from Minneapolis to said Harvey, under a policy of insurance issued by said Bankers Mutual Casualty Company, the substituted plaintiff, said insurance being for the use and benefit of said German State Bank. That a true copy of said policy is hereto attached as part hereof, and marked Exhibit "A."

That on or about November 10th, A. D. 1900, and
54 while said package was in good safety and prior to the departure of the train carrying said registered package, said Metropolitan Bank deposited in the United States Mails, at the postoffice in said City of Minneapolis, a letter of advice, properly addressed to said Bankers Mutual Casualty Company at Des Moines, Iowa, with postage thereon pre-paid, that said letter of advice notified said Bankers Mutual Casualty Company, of the shipment by said Metropolitan Bank of said sum of Three Thousand Dollars to said German State Bank of Harvey, and upon said mailing of said letter of advice, the contract of insurance and indemnity of said Registered package of currency immediately attached thereto and became a valid and complete contract of insurance and indemnity by the said Bankers Mutual Casualty Company, in favor of said German State Bank.

That in the regular course of transmission of the United States mails between the said City of Minneapolis and the said Town of Harvey, said Registered package was duly delivered by the Postoffice officials of said City of Minneapolis to the Railway Mail clerk or other proper postal official, and placed in a Railway mail-car or other proper car, the property of defendant, then standing upon defendant's said line of Railway, and was transported by defendant Railway Company to defendant's Railway Depot or Station, situated in or near said Town of Harvey, North Dakota.

That prior to the arrival of said Registered package at said Town of Harvey, the same, together with other registered mail packages and other mail matter, was, by said Railway Mail Clerk in charge of said mails, duly enclosed in a regular United States mail-sack or mail-pouch, which said mail-sack or mail-pouch was securely locked or fastened by the official government strap and lock.

That from and after the time of the depositing of the mail sack containing said currency in defendant's mail-car at Minneapolis, Minnesota, for the purpose of transit and transportation for delivery at Harvey, North Dakota, the same was
55 under the exclusive care, custody and control of the postal clerks, regularly employed by the United States Government and in charge of the mail in said car; that the mail sacks containing said registered package, from and after the time of its delivery in said postal car, to the proper postal clerks therein, up to and including the delivery of said mail sack at Harvey, North Dakota, was in the exclusive care, custody and control of the said postal clerks or authorities.

That upon the arrival of defendant's said train and postal-car at said Town of Harvey, North Dakota, said railway mail-clerk or other postal official, between eleven and twelve o'clock of said night, delivered said mail sack, duly locked, together with said registered package of currency therein contained to one James Magson, the night station agent, or night operator of defendant at said Town of Harvey, that said night station agent, or night operator, was not sworn as an official or employee of the Postoffice department of the United States Government, as required by law, but was then and there employed and duly authorized by the defendant to receive and take charge of all mail matter received over defendant's said line of Railway, at said Town of Harvey, including the mail-sack or mail-pouch containing said package of currency, and to deposit same in defendant's depot, at Harvey, North Dakota, and did so receive, take charge of and deposit said mail sack, or mail pouch.

That defendant was not sworn as an official or employee of the Postoffice Department of the United States Government, and had not subscribed or sworn to any oath relating to or concerning the carriage of the United States Mails, or the performance of defendant's duties as such carrier of the mails.

That Section 713 of the postal laws and regulations of the United States of the year A. D. 1893, which was in force at the time of the receipt and transmission of said registered postage is in words and figures as follows, to wit: "The railroad company will also be required to take the mails from and deliver them into all intermediate post offices and postal stations located not more than 80 rods from the nearest railroad station at which the company has an agent or other representative employed."

That said Postoffice at Harvey was an intermediate postoffice and was located not more than 80 rods from defendant's railroad station, or depot, at, or near said Town of Harvey.

56 That under said postal regulation it was the duty of said defendant to provide a sufficient and safe receptacle or place for the safety and security of said mail, while in its said custody, also to safely care for and guard said mail sack and its contents during the night, also to safely deliver the same to the post master or post mistress at the Post Office in said Town of Harvey, North Dakota.

But neglecting its said duty in the premises, defendant wholly failed and neglected to provide any receptacle or place for the safe or secure keeping of mail, and also failed to place a duly sworn official in charge of said mail-sack and further wholly failed to safely care for or guard said mail-sack and its contents, and also wholly failed to safely deliver the same, at the Postoffice to the Postmaster in said Town of Harvey. That by reason of defendant's said negligence, some person, to this plaintiff unknown, in some manner not known to this plaintiff, obtained access to said mail-sack and opened the same and abstracted or took therefrom said registered package whereby the same was wholly lost to said German State Bank.

That one, George A. Soule, was then the road master or foreman employed by said defendant at said town of Harvey, or one of defendant's employees or servants, but was not sworn in as an official or employee of the Postoffice department, as required by law, and was not authorized or employed by defendant to take charge of said mail-sack or to perform any duty in relation thereto and had no right of access to said mail sack, or to the mail therein contained, by virtue of his said employment by defendant.

That said Soule had previously unlawfully obtained and caused to be made, a key to the United States Government mail-sacks or mail-pouches, and personally, or with the aid and assistance of some person or persons, to this plaintiff unknown, did enter one of the rooms contained in the said depot building, where said mail-sack or mail-pouch had been placed by defendant's operator or night agent, on the floor or wall of said room, and not in any separate room, closet or
57 other safe receptacle, capable of being securely fastened against any intruder or unauthorized person, by lock and key or otherwise. That said room was not designed for or capable of safely keeping valuable articles or property.

That said Soule, or other person, had no right of access to said room, or to said mail-sack or mail-pouch, but through the negligence of defendant and its said night operator or night agent as set forth in this complaint, did gain entrance to said room and obtain access to said mail-sack or mail pouch, and

the mail-matter therein contained, and did find said mail-sack or mail-pouch situated or placed as above set forth, so that the same was readily accessible to any person gaining entrance to said room, and did find said mail-sack or mail-pouch wholly unprotected and unguarded by said night operator or otherwise.

That said Soule, or other person, by reason of the aforesaid negligence of said defendant and its said night agent or night operator, did obtain access to said mail-sack or mail-pouch and did unlock the same and abstract and take therefrom the aforesaid registered package, containing said Three Thousand Dollars ($3000.00) in currency and did unlawfully convert the same to his use and benefit, and the same has never been delivered or returned to said German State Bank or to said Metropolitan Bank of Minneapolis, or to this plaintiff, the Bankers Mutual Casualty Company, or to any one for the benefit of any of them.

That in consequence of the loss of said package, as hereinabove stated, said Bankers Mutual Casualty Company substituted plaintiff, became indebted to said German State Bank of Harvey under its said policy of insurance, and was compelled to and did pay said German State Bank the full amount of the loss so sustained by it, to wit: the sum of Three Thousand Dollars ($3,000.00) in good and lawful money of the United States; the same being the amount of insurance or indemnity held by said German State Bank, and covered
58 by said policy of insurance. That written demand has been made by said German State Bank and said Bankers Mutual Casualty Company of and from defendant, for repayment to them or one of them of said sum of Three Thousand Dollars, a copy of which written demand is hereto attached, as part hereof, and marked Exhibit "B," which payment defendant has refused and still refuses to make.

That by reason of the foregoing facts, the said Bankers Mutual Casualty Company has been and is now subrogated to all rights and remedies, which said German State Bank of Harvey had against defendant, to recover the sum of Three Thousand Dollars, so lost, with interest on said sum from and after the 10th day of November, A. D. 1900.

That for the purpose of further effectuating the rights of subrogation of this substituted plaintiff, against defendant, and to enable it to recover from defendant the sum so lost, said German State Bank, in writing, transferred and assigned to the plaintiff all of its rights in and to said money lost, and to sue for the recovery thereof. A true copy of said instru-

ment of assignment is hereto attached, as part hereof, and marked "Exhibit C."

Wherefore: the Bankers Mutual Casualty Company, substituted plaintiff, prays for judgment against defendant in said sum of Three Thousand Dollars ($3,000.00) with interest thereon at the rate of six per cent per annum from and after November 10th, 1900, and for costs of this action; and that defendant be required to appear and plead to this complaint, in the time and manner required by law and the rules of this court.

DALE & ALLEN,
G. W. BOWEN and
HENRY CONLIN,
Attorneys for Substituted Plaintiff.

Dale & Allen of Des Moines, Iowa,
G. W. Bowen, of Carroll, Iowa,
and Henry Conlin of Saint Paul, Minnesota,
Of Counsel for Plaintiff.

59 State of Iowa,
Polk County—ss.

George N. Sherman, being first duly sworn, on oath deposes and says: That he is Assistant Secretary of the Bankers Mutual Casualty Company, named as substituted plaintiff in the above entitled action; that he has read and knows the contents of the foregoing complaint; that he has personal knowledge of the insurance of said German State Bank by said Bankers Mutual Casualty Company; that he has information which he believes to be true as to all other facts set forth in said Substituted complaint, and that the matters and things set forth in said Substituted Complaint are true as he verily believes.

G. N. SHERMAN

Subscribed in my presence and sworn to before me by G. N. Sherman above named, at Des Moines, Iowa, this 25th day of October, A. D. 1901.

[Notarial Seal]. J. B. BLANK,
Notary Public in and for Polk County, Iowa.

60 Bankers Mutual
Casualty Company.
(Shipping Policy.)
Des Moines, Iowa.

By this policy of Insurance does insure German State Bank, Harvey, N. D., For account of themselves, In case of loss to be paid at Des Moines, Ia., in funds current to German State Bank, Harvey, N. D.

On Currency, Bonds, Coupons, Certificates of Stock and other securities or valuables.

To cover risks of transportation from the time of deposit and registration at the Post Office, or delivery to an Express Company's Office until delivered at the place of address.

To cover shipments by the United States Registered Mail, or by Express within the United States, or between the United States and the Dominion of Canada, Kingdom of Great Britain and Ireland, or the Continent of Europe. Whether the aggregate sum exceed the amount of the subscription hereon or not, the premium on the excess of such subscription to be paid from time to time as soon as the amount of the same shall be known to the assured. This company having been paid the consideration for this insurance by the assured at and after the rate of ..... on the subscribed amount on account.:

Subject to the Following Conditions:

First. No risk to be considered as insured hereon until a letter addressed to the Company at Des Moines, Iowa, detailing particulars of mailing with description of the property and the amount to be insured, is deposited in the Post Office at the place of mailing, which must be done while the property is in good safety and in all cases prior to the departure of the mail or express which carries the property insured.

Second. The perils and risks assumed by the Bankers Mutual Casualty Company under this insurance are those of transportation, such as fires, floods, thefts, collisions of trains,
61 and all detriment or misfortune, as well as those by water, that may come to the property hereby insured.

The risk to attach immediately following the mailing or shipping by express of the package and shall so continue until delivered to the address.

Third. This insurance is not to cover more than $10,000 by any one mail or express at one time.

Fourth. That all property insured under this policy shall be enclosed in a strong envelope or wrapper, well secured and in all cases sealed with wax.

Fifth. That the property insured under this policy shall be given its true value, and in case of under valuation of the property insured, no claim to be made for any amount above that originally stated in the letter of advice.

Sixth. That it is understood and agreed that this policy of insurance does not cover the loss by theft committed by one of the employes of the insured, or of the person or persons to whom or by whom the property was mailed.

Seventh. In case of loss, such loss to be paid within thirty days after proof of loss and proof of interest; and in case of loss or misfortune, it shall be lawful and necessary to and for the insured to sue, labor and travel for, in and about the defense, safeguard and recovery of the property without prejudice to this insurance; and upon the payment of any loss under this policy, the assured or assigns, in consideration thereof, agree to convey to the said Bankers Mutual Casualty Company the unincumbered title in the property lost as absolute owners thereof, and to take all necessary measures in behalf, at the risk and expense, of the said Bankers Mutual Casualty Company, for the recovery, reissue or replacement of said property, where possible.

Eighth. It is warranted by the assured that the packing and sealing of the package containing the property in-
62 sured hereunder, shall be witnessed by two adults, one of whom shall have charge of the same until deposited and registered at the Post Office or delivered to the Express Company.

Ninth. It is agreed that no suit or action against this Company for the recovery of any claim by virtue of this policy shall be sustained in any court of Law or Equity unless such suit or action shall be commenced within six months next after the date of mailing or shipment of the package claimed to be lost, and that the lapse of said period shall be a bar to any such suit or action.

Tenth. Warranted by the assured free from claim on account of capture, seizure, detention or destruction, by or arising from any belligerent nation, or by or from any officer, civil or military, or other person claiming to act in their name or under their authority or in their behalf.

Eleventh. In all cases of loss when it shall be claimed by the Bankers Mutual Casualty Company that the carrier or other party in whose custody the property may be at the time of such loss, is or may be liable, then the assured shall, at the request of this Company or its agents, assign and subrogate all their rights and claims to this Company to an amount not exceeding the sum paid by said Company.

Twelfth. Warranted free from claim in any wise inuring to the benefit of the carrier.

Thirteenth. This policy may be canceled by either party giving the other thirty days' notice in writing.

Fourteenth. Rates of premium as agreed, and premiums due and payable on the last day of each month.

In Witness Whereof, the Bankers Mutual Casualty Company has caused this policy to be executed at the city of Des Moines, Iowa, this 7 day of March, 1898, but this policy shall not be binding upon the Company until countersigned by a duly authorized representative of the Company.

63 CHARLES P. HANNAN, President. J. M. WOODWORTH, Secretary.

Countersigned:

G. N. SHERMAN, Assistant Secretary.

Exhibit "A," Sheet One.

64 Rates of Insurance on Registered Mail Shipments,

where the entire line of transportation is by railroad between any points in the State of North Dakota and the following Cities and any town in the States named. To be attached to and made a part of policy No. 2464 issued by the Bankers Mutual Casualty Company.

Dated Mch. 31, 1898.

Per $1000.	Securities.	Currency.	Currency. Not over 500.	Currency. Not over 200.
St. Louis, Mo.; Kansas City, Mo.....	35	60	50	40
St. Paul, Minn.; Minneapolis, Minn.....	15	20	15	10
New York City, N. Y.; Boston, Mass.....	45	75	60	50
Chicago, Ill.; Omaha, Neb.	30	50	40	30
All points to and from the New England States...	45	75	60	50
Between all points in North Dakota.....	15	20	15	10

Banks shipping currency or securities out of the States in which they are located shall be allowed the State rate within 100 miles.

65 From Bankers Mutual Casualty Company, Des Moines, Iowa.

To the Minneapolis, St. Paul and Sault Sainte Marie Railroad Company, Thomas Lowry, President, C. F. Clermont, Secretary, and Treasurer, and A. H. Bright, General Solicitor:

You are hereby notified, that we demand you for immediate settlement, and the payment to us of $3000.00 being the amount of our loss, occasioned by the stealing of a package of currency amounting to $3000.00 which was sent by the Metropolitan Bank of Minneapolis, Minnesota, to the German State Bank of Harvey, North Dakota, said loss being occasioned by your negligence, and the negligence of your employees, in not taking proper care thereof, and allowing same to be lost or stolen, same having been sent by Express, or registered mail, and carried over your road, and unless we receive immediate settlement for said amount, and the payment of said sum of $3000.00 we shall commence suit against you for the recovery thereof.

Dated this ..... day of February, 1901.

(Signed) A. U. QUINT,
Treasurer and Manager.

Exhibit "B."

66 State of North Dakota,
County of Wells—ss.

Know All Men by These Presents:

That we, German State Bank, hereby assign, transfer and set over unto the Bankers Mutual Casualty Company or their order, all our right, title and interest in any and all of the money contained in the package shipped by registered mail on the 10th day of November, 1900, by the Metropolitan Bank of the Town of Minneapolis, State of Minnesota, and hereby authorize the Bankers Mutual Casualty Company or their assigns to maintain action in their own name to recover any or all of said money, with the same rights and powers as we ourselves could do it.

(Signed) GERMAN STATE BANK.
By A. N. Beiseker, Cashier.

Exhibit "C."

67 And on November 12, 1901, the following stipulation was filed of record in said cause, to wit:

68 In the United States District Court, Fourth District of Minnesota.

November, A. D. 1901.

Bankers Mutual Casualty Company, a Corporation and Citizen of the State of Iowa, Substituted as Plaintiff in lieu of the German State Bank, Original Plaintiff,

vs.

The Minneapolis, Saint Paul and Sault Sainte Marie Railway Company, a corporation and Citizen of the State of Minnesota, Defendant.

Amended and Substituted Complaint.

It is hereby stipulated between the parties hereto, that the amended and substituted complaint heretofore filed herein, by the plaintiff, may be amended by inserting therein, on page five (5) thereof, after the word "official," in the fourteenth (14) line of said page five (5) the words, "between eleven and twelve o'clock p. m. of said night."

Dated November, ... 1901.

HENRY CONLIN,
Attorney for Plaintiff.
ALFRED H. BRIGHT,
Attorney for Defendant.

It is stipulated that the demurrer to the amended complaint in the above entitled action may be set down for hearing on Saturday the 23rd of November, 1901.

HENRY CONLIN,
Attorney for plff.
ALFRED H. BRIGHT,
Atty. for Deft.

69 And on December 20th, 1901. the following decision was filed of record in said cause, to wit:

70 United States Circuit Court, District of Minnesota, Fourth Division.

Bankers Mutual Casualty Company

vs.

The Minneapolis, Saint Paul and Sault Ste. Marie Ry. Co.

Decision.

This action was begun by the German State Bank of Harvey, North Dakota, against the above named defendant. After a demurrer to the original bill of complaint was sustained, the complaint was amended and the Bankers Mutual Casualty Company was by consent substituted as plaintiff; and the case is presented again upon demurrer to this complaint of the present plaintiff.

The statement of facts is the same in substance as in the original complaint. The added statement that there was no contract between the United States and the defendant for the carriage of the mails is overborne by specific particular statements of fact showing the contrary; and the new allegation that the defendant—a railway corporation—was not sworn as an official or employee of the Post Office Department, needs no comment.

The reasons for holding that this complaint does not state any cause of action against the defendant are set forth in my decision sustaining the demurrer to the original complaint, and need not be here repeated.

The demurrer is sustained. Plaintiff may have twenty days from the filing hereof to amend its complaint, if so advised, otherwise judgment is ordered for the defendant with costs.

WM. LOCHREN, Judge.

Indorsed: "Filed Dec. 20, 1901. Henry D. Lang, Clerk, by Jesse H. Smith, Deputy."

71 And on January 8, 1901, the following proceedings of court were entered of record in said cause, viz:

72 United States Circuit Court for the District of Minnesota, Fourth Division.

Term Minutes, September Term, A. D. 1901, January 8, 1902.

Wednesday morning.

Court opened pursuant to adjournment.

Present: Honorable William Lochren, Judge; Henry D. Lang, Clerk; by Geo. F. Hitchcock, Jr., Deputy.

Bankers Mutual Casualty Co.,

v.

Minneapolis, St. Paul and Sault Sainte Marie Railway Company.

It is hereby stipulated by and between the parties to the above entitled action, by their respective attorneys, that the defendant herein may tax costs against the plaintiff on the 8th day of January, 1902, at two o'clock in the sum of $15.15 and that the same may be inserted in the judgment in said action, which may then and there, at said time, be entered in favor of the defendant and against the plaintiff.

Dated January 8th, 1902.

HENRY CONLIN,
Attorney for Plaintiff.
ALFRED H. BRIGHT,
Attorney for Defendant.

Pursuant to the above stipulation the following judgment was entered herein, to wit:

Be it remembered: that on the 23rd day of November, A. D. 1901, by agreement of *parties and* under the order of this Court, this cause came on for hearing before the Hon. Wm. Lochren acting as Circuit Judge, upon the demurrer filed by defendant to plaintiff's Amended & Substituted Complaint, as amended by stipulation of the parties, the plaintiff appearing by its attorneys H. F. Dale, Geo. W. Bowen and Henry Conlin, and the defendant appearing by its attorney Alfred H. Bright and thereafter on the 20th day of December,
73 A. D. 1901, the Court being duly advised in the premises, sustained said demurrer upon the first ground thereof, to which said ruling plaintiff, at the time, duly excepted, and then and there this substituted plaintiff elected to stand upon its said Amended and Substituted complaint, as amended by stipulation, and refused to plead further.

It is thereupon ordered and adjudged by the Court, that plaintiff's said action be and is hereby dismissed on the merits and that defendant have and recover of and from the substituted plaintiff the costs of this action, taxed in the sum of Fifteen and 15/100 Dollars, and that execution issue therefor, to which said judgment the Substituted plaintiff, at the time duly excepted.

Dated January 8th, 1902.

WM. LOCHREN, Judge.

Ordered: That this Court be, and the same hereby is adjourned until Thursday, January 9, 1902, at ten o'clock a. m.

A True Record.

Attest: HENRY D. LANG, Clerk,
By George F. Hitchcock, Deputy.

74 United States of America.

Circuit Court of the United States, District of Minnesota, Fourth Division.

I, Henry D. Lang, Clerk of said Circuit Court, do hereby certify and return to the Honorable, the United States Circuit Court of Appeals for the Eighth Circuit, that the foregoing, consisting of 73 pages, numbered consecutively from 1 to 73 inclusive, is a true and complete transcript of the Records, Process, Pleadings, Orders, Final Judgment and all other proceedings in said cause and of the whole thereof, as appears from the original records and files of said Court; and I do

further certify and return, that I have annexed to said transcript, and included within said paging, the original citation, together with the proof of service thereof.

In Witness Whereof, I have hereunto set my hand, and affixed the seal of said Court, at Minneapolis, in the District of Minnesota, this First day of March, A. D. 1902.

Seal
U. S. Circuit Court,
Dist. of Minnesota,
Fourth Division.

HENRY D. LANG, Clerk,
By George F. Hitchcock, Jr., Deputy.

Filed Mar. 6, 1902. John D. Jordan, Clerk.

(*Appearance for Plaintiff in Error.*)

And on the eleventh day of March, A. D. 1902, an appearance of counsel for plaintiff in error was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

THE BANKERS MUTUAL CASUALTY COMPANY, Plaintiff in Error,
vs.
THE MINNEAPOLIS, ST. PAUL AND SAULT SAINTE MARIE Railway Co. } No. 1727.

The clerk will enter *my* appearance as counsel for the plaintiff in error.

HORATIO F. DALE,
GEO. W. BOWEN,
HENRY CONLIN, AND
WILLIAM CONNOR.

HORATIO F. DALE,
Des Moines, Iowa, Counsel.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1727. The Bankers Mutual Casualty Company, plaintiff in error, *vs.* The Minneapolis, St. Paul and Sault Sainte Marie R'y Co. Appearance. Filed Mar. 11, 1902, John D. Jordan, clerk. Horatio F. Dale, Geo. W. Bowen, Henry Conlin and William Connor, counsel for pl'ff in error.

(*Appearance for Defendant in Error.*)

And on the nineteenth day of March, A. D. 1902, an appearance of counsel for defendant in error was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

BANKERS MUTUAL CASUALTY CO., Plaintiff in Error,
vs.
MINNEAPOLIS, ST. PAUL AND SAULT SAINTE MARIE Railway Company. } No. 1727.

The clerk will enter my appearance as counsel for the defendant in error.

ALFRED H. BRIGHT.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1727. Bankers Mutual Casualty Co., plaintiff in error, *vs.* Minneapolis, St. Paul and Sault Sainte Marie R'y Co. Appearance. Filed Mar. 19, 1902, John D. Jordan, clerk. Alfred H. Bright, Minneapolis, Minn., counsel for def't in error.

(*Argument Commenced.*)

And on the sixteenth day of May, A. D. 1902, in the record of the proceedings of said circuit court of appeals is an entry in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1902.

FRIDAY, *May* 16, 1902.

THE BANKERS MUTUAL CASUALTY COMPANY, Plaintiff in Error,
vs.
THE MINNEAPOLIS, ST. PAUL AND SAULT SAINTE MARIE Railway Company. } No. 1727.

In error to the circuit court of the United States for the district of Minnesota.

This cause having been called for hearing in its regular order, argument was commenced by Mr. Horatio F. Dale for plaintiff in error and continued by Mr. Alfred H. Bright for defendant in error, and the hour of adjournment having arrived further argument is postponed until tomorrow morning.

(*Order of Submission.*)

And on the seventeenth day of May, A. D. 1902, in the record of the proceedings of said circuit court of appeals is an order of submission in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1902.

SATURDAY, *May* 17, 1902.

THE BANKERS MUTUAL CASUALTY COMPANY, Plaintiff in Error,
vs.
THE MINNEAPOLIS, ST. PAUL AND SAULT SAINTE MARIE Railway Company. } No. 1727.

In error to the circuit court of the United States for the district of Minnesota.

This cause coming on to be further heard, argument was continued by Mr. Alfred H. Bright for defendant in error and concluded by Mr. Horatio F. Dale for plaintiff in error.

Thereupon, this cause was submitted to the court on the transcript of record from said circuit court and the briefs of counsel filed herein.

(*Opinion.*)

And on the fourteenth day of July, A. D. 1902, an opinion of said circuit court of appeals was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, A. D. 1902.

BANKERS MUTUAL CASUALTY COMPANY, Plaintiff in Error,
vs.
THE MINNEAPOLIS, ST. PAUL AND SAULT Sainte Marie Railway Company, Defendant in Error. } No. 1727. In Error to the Circuit Court of the United States for the District of Minnesota.

Mr. H. F. Dale (Mr. William Connor, Mr. George W. Bowen and Mr. Henry Conlin were with him on the brief) for the plaintiff in error.

Mr. Alfred H. Bright for defendant in error.

Before Sanborn and Thayer, circuit judges, and Garland, district judge.

Statement.

Plaintiff in error brought an action in the court below against defendant in error, for the purpose of recovering three thousand dollars ($3,000) and interest, by reason of the facts alleged in its complaint. The complaint alleged the following facts:

"That the Bankers' Mutual Casualty Company, during all of the year A. D. 1900, and up to the present time, is and was a corporation, duly organized under the laws of the State of Iowa, and a citizen of said State, with its principal place of business at Des Moines, in said State engaged in the business of insuring banks against loss from robbery and burglary, including the insurance against loss of packages of money, while in the course of transmission from place to place, while regularly carried in the United States registered mails.

"That defendant, during all of the year A. D. 1900, and up to the present time, is and was a corporation, duly organized under the laws of the State of Minnesota, and a citizen of said State, with its principal place of business at Minneapolis, in said State, engaged in operating a line of railroad situated in the States of Minnesota and North Dakota.

"That the German State bank, during all of the year A. D. 1900, and up to the present time, is and was a corporation, duly organized under the laws of the State of North Dakota, and a citizen of said State, with its principal place of business at the town of Harvey, in said State, engaged in a general banking business at said town.

"That during the whole year A. D. 1900, and up to the present time, defendant is and was engaged in carrying the United States mails between the terminal and intermediate stations located upon and along its said line of railroad, under and by virtue of the statutes and laws of the United States, and the regulations established by the Postoffice Department of the United States Government and in pursuance of a fixing of the compensation to be paid to defendant by the United States Government for carrying said mails and the person in charge thereof, based upon the last preceding reweighing of said mails and upon notice in writing, in the usual form, from the Second Assistant Postmaster General of the United States, requiring defendant to carry said mails and the person in charge thereof.

"That said depot, at or near the town of Harvey, was an intermediate station on that part of defendant's said line of railroad within the State of North Dakota, which extends from the station at Hankinson to the station at Portal, and the railroad line between said stations at Hankinson and Portal is designated by and known to the Postoffice Department of the United States, as railroad route No. 161,018, being a distance of 344.58 miles, and the compensation fixed by the United States Postoffice Department to be paid annually by the United States to defendant, during all the period herein referred to for the carriage of said mails and the person in charge thereof is and was the sum of sixty-four thousand eight hundred and fifteen and 49-100 dollars ($64,815.49) at the rate of $188.10 per mile.

"That this substituted plaintiff is not in possession of the aforesaid notice to defendant, and is unable to attach to this petition said notice or a true copy thereof.

"That during all of the period hereinbefore referred to, there was no contract of any kind between defendant and the United States

Government, concerning or providing for the carriage by defendant, of said mails, or any part thereof, or of the person in charge of said mails, upon or along defendant's said line of railway or any part thereof.

"That on or about the 10th day of November, A. D. 1900, the Metropolitan bank, a corporation organized under the laws of the State of Minnesota, was engaged in transacting a general banking business in the city of Minneapolis, in said State, and on or about said date, said bank deposited in the United States mails, at Minneapolis, in said State, a package containing lawful money of the United States, commonly known and called currency, of the actual cash value of three thousand dollars ($3,000.00), in an envelope properly addressed to the German State bank, at Harvey, North Dakota, and prepaid thereon the postage and registration fee, and said package was thereupon duly registered by the postmaster at said postoffice. That from and after the time of depositing said package in said post-office at Minneapolis, said package and its contents *was* the property of said German State bank.

"That said registered package was covered by insurance and indemnity against loss while in transit through the United States mails from Minneapolis to said Harvey, under a policy of insurance issued by said Bankers Mutual Casualty Company, the substituted plaintiff, said insurance being for the use and benefit of said German State bank. That a true copy of said policy is hereto attached as part hereof, and marked Exhibit 'A.'

"That on or about November 10th, A. D. 1900, and while said package was in good safety and prior to the departure of the train carrying said registered package, said Metropolitan bank deposited in the United States mails, at the postoffice in said city of Minneapolis, a letter of advice, properly addressed to said Bankers Mutual Casualty Company at Des Moines, Iowa, with postage thereon prepaid, that said letter of advice notified said Bankers Mutual Casualty Company, of the shipment by said Metropolitan bank of said sum of three thousand dollars to said German State Bank of Harvey, and upon said mailing of said letter of advice, the contract of insurance and indemnity of said registered package of currency immediately attached thereto and became a valid and complete contract of insurance and indemnity by the said Bankers Mutual Casualty Company, in favor of said German State bank.

"That in the regular course of transmission of the United States mails between the said city of Minneapolis and the said town of Harvey, said registered package was duly delivered by the postoffice officials of said city of Minneapolis to the railway mail clerk or other proper postal official, and placed in a railway mail car or other proper car, the property of defendant, then standing upon defendant's said line of railway, and was transported by defendant railway company to defendant's railway depot or station, situated in or near said town of Harvey, North Dakota.

"That prior to the arrival of said registered package at said town of Harvey, the same, together with other registered mail packages

and other mail matter, was, by said railway mail clerk in charge of said mails, duly enclosed in a regular United States mail-sack or mail-pouch, which said mail-sack or mail-pouch was securely locked or fastened by the official Government strap and lock.

"That from and after the time of the depositing of the mail sack containing said currency in defendant's mail-car at Minneapolis, Minnesota, for the purpose of transit and transportation for delivery at Harvey, North Dakota, the same was under the exclusive care, custody and control of the postal clerks, regularly employed by the United States Government and in charge of the mail in said car; that the mail sacks containing said registered package, from and after the time of its delivery in said postal car, to the proper postal clerks therein, up to and including the delivery of said mail-sack at Harvey, North Dakota, was in the exclusive care, custody and control of the said postal clerks or authorities.

"That upon the arrival of defendant's said train and postal car at said town of Harvey, North Dakota, said railway mail clerk or other postal official, between eleven and twelve o'clock of said night, delivered said mail-sack, duly locked, together with said registered package of currency therein contained to one James Magson, the night station agent, or night operator of defendant at said town of Harvey, that said night station agent, or night operator, was not sworn as an official or employee of the Postoffice Department of the United States Government, as required by law, but was then and there employed and duly authorized by the defendant to receive and take charge of all mail matter received over defendant's said line of railway, at said town of Harvey, including the mail-sack or mail-pouch containing said package of currency, and to deposit same in defendant's depot, at Harvey, North Dakota, and did so receive, take charge of and deposit said mail-sack or mail-pouch.

"That defendant was not sworn as an official or employee of the Postoffice Department of the United States Government, and had not subscribed or sworn to any oath relating to or concerning the carriage of the United States mails, or the performance of defendant's duties as such carrier of the mails.

"That section 713 of the postal laws and regulations of the United States of the year A. D. 1893, which was in force at the time of the receipt and transmission of said registered postage is in words and figures as follows, to-wit: 'The railroad company will also be required to take the mails from and deliver them into all intermediate postoffices and postal stations located not more than 80 rods from the nearest railroad station at which the company has an agent or other representative employed.'

"That said postoffice at Harvey was an intermediate postoffice and was located not more than 80 rods from defendant's railroad station, or depot, at, or near said town of Harvey.

"That under said postal regulation it was the duty of said defendant to provide a sufficient and safe receptacle or place for the safety and security of said mail, while in its said custody, also to safely care for and guard said mail-sack and its contents during the

night, also to safely deliver the same to the postmaster or postmistress at the postoffice in said town of Harvey, North Dakota.

"But neglecting its said duty in the premises, defendant wholly failed and neglected to provide any receptacle or place for the safe or secure keeping of mail, and also failed to place a duly sworn official in charge of said mail-sack and further wholly failed to safely care for or guard said mail-sack and its contents, and also wholly failed to safely deliver the same, at the postoffice to the postmaster in said town of Harvey. That by reason of defendant's said negligence, some person, to this plaintiff unknown, in some manner not known to this plaintiff, obtained access to said mail-sack and opened the same and abstracted or took therefrom said registered package whereby the same was wholly lost to said German State bank.

"That one, George A. Soule, was then the roadmaster or foreman employed by said defendant at said town of Harvey, or one of defendant's employees or servants, but was not sworn in as an official or employee of the Postoffice Department, as required by law, and was not authorized or employed by defendant to take charge of said mail-sack or to perform any duty in relation thereto and had no right of access to said mail-sack, or to the mail therein contained, by virtue of his said employment by defendant.

"That said Soule had previously unlawfully obtained and caused to be made a key to the United States Government mail-sacks or mail-pouches, and personally, or with the aid and assistance of some person or persons, to this plaintiff unknown, did enter one of the rooms contained in the said depot building, where said mail-sack or mail-pouch had been placed by defendant's operator or night agent, on the floor or wall of said room, and not in any separate room, closet or other safe receptacle, capable of being securely fastened against any intruder or unauthorized person, by lock and key or otherwise. That said room was not designed for or capable of safely keeping valuable articles or property.

"That said Soule, or other person, had no right of access to said room, or to said mail-sack or mail-pouch, but through the negligence of defendant and its said night operator or night agent as set forth in this complaint, did gain entrance to said room and obtain access to said mail-sack or mail-pouch, and the mail matter therein contained, and did find said mail-sack or mail-pouch situated or placed as above set forth, so that the same was readily accessible to any person gaining entrance to said room, and did find said mail-sack or mail-pouch wholly unprotected and unguarded by said night operator or otherwise.

"That said Soule, or other person, by reason of the aforesaid negligence of said defendant and its said night agent or night operator, did obtain access to said mail-sack or mail-pouch and did unlock the same and abstract and take therefrom the aforesaid registered package, containing said three thousand dollars ($3,000.00) in currency and did unlawfully convert the same to his use and benefit, and the same has never been delivered or returned to said German State

bank or to said Metropolitan Bank of Minneapolis, or to this plaintiff, The Bankers Mutual Casualty Company, or to any one for the benefit of any of them.

"That in consequence of the loss of said package, as hereinabove stated, said Bankers Mutual Casualty Company, substituted plaintiff, became indebted to said German State Bank of Harvey under its said policy of insurance, and was compelled to and did pay said German State bank the full amount of the loss so sustained by it, to-wit: the sum of three thousand dollars ($3,000.00) in good and lawful money of the United States; the same being the amount of insurance or indemnity held by said German State bank, and covered by said policy of insurance. That written demand has been made by said German State bank and said Bankers Mutual Casualty Company of and from defendant, for repayment to them or one of them of said sum of three thousand dollars, a copy of which written demand is hereto attached, as part hereof, and marked Exhibit 'B,' which payment defendant has refused and still refuses to make.

"That by reason of the foregoing facts, the said Bankers Mutual Casualty Company has been and is now subrogated to all rights and remedies, which said German State Bank of Harvey had against defendant, to recover the sum of three thousand dollars, so lost, with interest on said sum from and after the 10th day of November, A. D. 1900.

"That for the purpose of further effectuating the rights of subrogation of this substituted plaintiff, against defendant, and to enable it to recover from defendant the sum so lost, said German State bank, in writing, transferred and assigned to the plaintiff all of its rights in and to said money lost, and to sue for the recovery thereof. A true copy of said instrument of assignment is hereto attached, as part hereof, and marked 'Exhibit C.'"

Defendant in error demurred to said complaint, upon the ground that it did not state facts sufficient to constitute a cause of action. The demurrer was sustained by the court and the plaintiff in error having elected to stand upon its complaint, the action was dismissed on the merits. The order sustaining the demurrer was duly excepted to, and this ruling of the court is assigned as error.

CARLAND, district judge, after stating the case as above, delivered the opinion of the court.

This case presents but one question for our consideration, and that is whether or not the defendant in error is liable to the plaintiff in error, upon the facts stated?

No Federal decision is called to our attention, and we are unable to find any, parallel to the case at bar. There are, however, well settled principles of law which we believe must determine the case. It is claimed by plaintiff in error that it is alleged in the complaint and admitted by the demurrer, that defendant in error had no contract relation with the United States in pursuance of which it carried the mail between Minneapolis, Minnesota, and Harvey, North Dakota. That the duty to carry the mail safely was imposed

upon defendant in error by the Constitution and laws of the United States, and that this duty being imposed by law any person injured by a violation thereof would have his remedy. If we correctly understand counsel, it is argued that there was no contract relation between the defendant in error and the United States, in order to avoid the objection that plaintiff in error stands in no such relation to that contract as would enable it to maintain an action for a breach thereof. In the view we take of the case, however, we do not see how it makes any difference whether defendant in error was carrying the mail under and by virtue of a contract with the United States, or whether that duty was imposed by the Constitution and laws thereof; in either event it was a public agent of the United States and its liability must be determined accordingly. The defendant in error, in regard to its liability for the loss of the money, was in no sense a common carrier. As was said in the case of *Central Railroad and Banking Company v. Lampley*, 76 Alabama 357: "Between a contractor for carrying the public mails and the sender of letters, there is no privity of contract, and the contractor has no right to and receives no remuneration from the sender. The Government undertakes the transmission of the mails, and receives pay therefor by the postage charged. The contractor's contract is with the Government, and by it his compensation is paid. He owes a duty, not to the sender of the letters as an individual, but to the integral public, springing from his agreement to carry the mails. The public mail is not the proper subject of a common carrier's charge, and the extraordinary responsibility attached by law to such employment does not attach to a mail-contractor. He does not become an insurer of the safe transportation of mail matter; the extent of his liability is the same as that of a bailee for hire.

The railroad company was not transformed into a common carrier as to the mails, because, being engaged in the regular business of transporting goods for the public, it was, at the same time, carrying the mails by direction and employment of the proper department of the Government. The occupation of the company was of a dual character. It was acting in two capacities, created and regulated by separate and distinct contracts and employments. The liability of the defendant cannot, therefore, be determined by the rules governing the responsibility of a common carrier."

It seems clear to us that defendant in error was a public agent of the United States, in relation to carrying the mail, for the reason that the Constitution of the United States conferred upon them the power to establish post offices and post roads, and this power was granted by the people as one of the sovereign powers to be exercised by the General Government, exclusively. By virtue of this grant of power the United States has always through its Post Office Department assumed the exclusive charge of the carriage and delivery of the mail for the benefit of all the people. In doing so, the United States are beyond question engaged in the discharge of a governmental function. All persons or corporations who are engaged in the carriage or delivery of the mail, by the authority of the United

States, conferred by contract or general laws, are but the instruments used by them to discharge this function. As a practical illustration as to whether the defendant in error was engaged in the discharge of a governmental function, let us suppose that some person had attempted to obstruct the carriage and delivery of this mail sack, which contained the money in controversy, at the post office at Harvey, N. D., while it was in possession of defendant in error. Would not the person be liable to punishment under the penal laws of the United States? Beyond question he would. From whence springs the power of the United States to punish such an act? It springs from the authority that all governments possess of punishing the person who obstructs that government in the lawful discharge of its duty.

It now becomes necessary to ascertain what the liabilities of public agents are, and upon this question there seems to be little, if any, conflict of authority. A public officer or agent, provided he has exercised ordinary care to select competent subordinates, is not responsible for the misfeasances or positive wrongs, or for the non-feasances, or negligences or omissions of duty of the sub-agents or servants, or other persons properly employed by or under him in the discharge of his official duties. *Robertson v. Sichel*, 127 U. S. 507, Story on Agency, sec. 319.

In reference to the Post Office Department, it has been uniformly held, that the Postmaster General, the deputy postmasters and their assistants and clerks, appointed and sworn as required by law, are public officers, each of whom is responsible for his own negligence only, and not for that of any of the others, although selected by him and subject to his orders. *Lane v. Cotton*, 1 Ld. Raym. 646; *Whitfield v. Le Despencer*, Cowp. 754; *Dunlop v. Monroe*, 7 Cranch 242; *Schroyer v. Lynch*, 8 Watts 453; *Bishop v. Williamson*, 11 Me. 495; *Hutchins v. Brackett*, 22 N. H. 252; *Conwell v. Voorhees*, 13 Ohio 523; Story, Bail. sec. 462–463; *Robertson v. Sichel*, 127 U. S. 507.

The same doctrine has been extended or applied to mail contractors by the cases of *Conwell v. Voorhees*, 13 Ohio 523; *Hutchins v. Brackett*, 22 N. H. 252; *Foster v. Metts*, 55 Miss. 77.

The court, however, refused to extend the rule to mail contractors in the cases of *Central Railroad & Banking Co. v. Lampley*, 76 Alabama 357; *Sawyers v. Corse*, 17 Gratt. 230.

The Alabama court adopted and followed the reasoning of the Virginia court. The reasoning of the cases cited, is illustrated by the following language taken from the opinion in *Central Railroad and Banking Company v. Lampley:*

"The contractor, being the person who contracts with and is paid by the Government, and who gives a guarantee for the faithful discharge of the service, is the public agent, if such contract constitutes an agency. He is the one directly responsible to, and with whom the Government deals. He employs his own carriers, who are paid by him, and who are not known to the Government, other than as his employees. As to civil responsibility, the contractor stands between the carrier and the Government; although, for the purpose of public

security, an oath may be required of the carrier, and penalties imposed for violations of the laws of the postal service. In a sense, the carrier may be said to do work for the Government, not as an agent, but as one employed by the contractor, in his own name, for his individual benefit, and on his personal responsibility, as necessary help to do the service which he has contracted to do. Laborers employed by a contractor for the construction of naval vessels, or for the erection of public buildings, may, in the same sense, be said to do work for the Government, but they are not public laborers. We approve and adopt the legal propositions, as to the liability of a contractor, maintained and asserted in *Sawyers v. Corse*, 17 Grat., 230."

This reasoning would make the defendant in error a public agent, but would deny that position to the agent at Harvey, the subordinate agent of the defendant in error being what is called a carrier in the opinion under consideration. We do not think that the comparison between a laborer employed by a contractor for the construction of naval vessels or for the erection of public buildings an apt one. The United States, in building a public building or in constructing a naval vessel through a contractor, are not exercising sovereign power or engaged in a purely governmental function. They are acting in their purely private or business capacity. Any one possessed of sufficient means may construct a vessel or build a building. The United States only can carry the mail. Hence we believe that the character of the service in which the agent is engaged must determine in the case at bar as to whether the subordinate agents of the defendant in error in so far as they were engaged in carrying the mail, were or were not public agents. Let us now apply the principles of law which in our opinion are controlling, to the facts in this case. There is nothing alleged in the complaint that would connect the defendant in error personally with the wrong complained of. That is, there is no allegation that any officer of the defendant in error whose act or omission the court would be bound to hold was the act or omission of defendant in error, did any act or omitted to do any act which caused the loss of the mail. There is no allegation that defendant in error did not exercise ordinary care in the selection of competent persons to handle the mail after it reached Harvey. The allegation of the complaint in regard to the agent at Harvey is as follows:

"That upon the arrival of defendant's said train and postal-car at said town of Harvey, North Dakota, said railway mail-clerk or other postal official, between eleven and twelve o'clock of said night, delivered said mail sack, duly locked, together with said registered package of currency therein contained to one James Magson, the night station agent, or night operator of defendant at said town of Harvey, that said night station agent, or night operator, was not sworn as an official or employee of the Post Office Department of the United States Government, as required by law, but was then and there employed and duly authorized by the defendant to receive and take charge of all mail matter received over defendant's said line of railway, at said town of Harvey, including the mail-sack or mail-pouch

containing said package of currency, and to deposit same in defendant's depot, at Harvey, North Dakota, and did so receive, take charge of and deposit said mail-sack or mail-pouch."

The fact that Magson was not sworn, is not controlling, for if the defendant in error in its business in carrying the mail, was a public agent, then it was responsible for its own negligence only and not for the negligence of its servants engaged in the same business. If the defendant in error was a person, this case would be plain. The apparent difficulty arises from separating the negligence of defendant in error from the negligence of its subordinate agent, arising from the fact that a corporation must perform all its acts through agents. We think, however, that there is a well defined distinction with reference to its duties as a carrier of the mail. To illustrate. Supposing the agent Magson had left the mail-sack on the depot platform and by reason thereof the same had been stolen. This, in the absence of any showing that defendant in error had not used proper care in the selection of Magson as its agent, would have been the negligence of Magson, for which he would have been liable, but it would not have been the negligence of defendant in error. If, however, some officer of defendant in error, who stood in such a relation to the company that his negligence would be its negligence, should negligently do some act whereby a loss occurred from the mail, then defendant in error would be liable. Let us now examine the acts of negligence alleged. Sec. 713 of the postal regulations of 1893 set out in the complaint determined the duty of defendant in error in relation to the mail-sack after its receipt by Magson. The regulation is as follows: "The railroad company will also be required to take the mails from and deliver them into all intermediate post offices and postal stations located not more than 80 rods from the nearest railroad station at which the company has an agent or other representative employed."

Whatever duty this regulation imposed upon defendant in error must be determined from the regulation itself. The demurrer admits the existence of the regulation, not the pleader's opinion or legal conclusion of its effect. It simply made it the duty of defendant in error to deliver the mail-sack at the post office. There is no allegation that the mail-sack was not delivered at the post office, but that after it was delivered to Magson, some person unknown to the pleader, opened the mail-sack and abstracted the package of money in controversy. We know nothing about the facts connected with the loss of the money except what is alleged in the complaint, and in the discussion of the case, we of course disclaim any intention of reflecting on the character of any one. The allegations of the complaint are entirely consistent with the theory that Magson stole the money. If so, in the absence of any allegation of negligence of defendant in error in employing him, there is no evidence of negligence that would charge the defendant in error, as all the precautions that it is alleged would have prevented the theft, would not have prevailed against Magson, for by the act of the postal clerk and defendant in error, the custody of the mail-sack was delivered to him. Mere proof that the package of money was stolen, no matter by whom, creates no liability

against defendant in error, unless his own negligence was the direct cause of the larceny, as contradistinguished from the negligence of its agent at Harvey. We are not informed by the record as to what was done with the mail-sack after Magson deposited the same in defendant in error's depot, or what became of it afterwards. We are satisfied, however, that if the negligence of any one directly contributed to the larceny, it was the negligence of Magson, for whose negligence in the matter of carrying the mail, the defendant in error is not liable.

The judgment below must be affirmed, and it is so ordered.

Filed July 14, 1902.

(*Judgment.*)

And on the fourteenth day of July, A. D. 1902, in the record of the proceedings of said circuit court of appeals is a judgment in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1902.

MONDAY, *July* 14, 1902.

THE BANKERS MUTUAL CASUALTY COMPANY, Plaintiff in Error,
vs.
THE MINNEAPOLIS, ST. PAUL AND SAULT SAINTE MARIE Railway Company. } No. 1727.

In error to the circuit court of the United States for the district of Minnesota.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Minnesota, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said circuit court, in this cause, be, and the same is hereby, affirmed with costs; and that The Minneapolis, St. Paul and Sault Sainte Marie Railway Company have and recover against The Bankers Mutual Casualty Company, the sum of twenty dollars for its costs herein and have execution therefor.

July 14, 1902.

(*Petition for Writ of Error.*)

And on the twenty-seventh day of September, A. D. 1902, a petition for writ of error was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to-wit:

In the Supreme Court of the United States.

BANKERS MUTUAL CASUALTY COMPANY, Petitioner,
vs.
THE MINNEAPOLIS, ST. PAUL & SAULT SAINTE MARIE RAILWAY COMPANY, Respondent.
} Petition for Writ of Error.

Now comes The Bankers Mutual Casualty Company, petitioner, herein, who was plaintiff in the circuit court of the United States for the district of Minnesota, and the plaintiff in error in the circuit court of appeals for the eighth judicial circuit, and respectfully shows:

That heretofore, on the 8th day of January, A. D. 1902, upon a demurrer filed by said railway company as defendant in said circuit court, a final judgment was rendered and entered of record against this petitioner sustaining said demurrer and dismissing the complaint of this petitioner on the merits, and for costs, said proceeding being had and said judgment rendered in an action at law commenced in said circuit court, in which action this petitioner, a corporation organized under the laws of the State of Iowa, was plaintiff and the said The Minneapolis, St. Paul & Sault Sainte Marie Railway Company, a corporation organized under the laws of the State of Minnesota, was defendant.

Said judgment against your petitioner was rendered in an action brought by it against the said railway company to recover the sum of three thousand dollars ($3,000.00) damages caused by the loss of three thousand dollars ($3,000.00) in currency of the United States, which was being transmitted in November, A. D. 1900, in and by means of the United States registered mail from the city of Minneapolis in the State of Minnesota to the town of Harvey in the State of North Dakota, the United States mail bag containing said registered package being carried by said railway company between the points mentioned, under notification from and by direction of the Post-office Department of the United States, and in accordance with the laws of the United States and the duly established rules and regulations of the Post-office Department, said registered package having been lost through the alleged negligence of said defendant railway company and its employé, at defendant's depot at said Harvey in North Dakota, while said registered package was in the exclusive care and custody of defendant by its said employé; and your petitioner avers that said action arose under and involved the construction and application of the laws of the United States and of the rules and regulations duly established by the Postmaster General under and by virtue of the statutes of the United States.

That upon said adverse decision by said circuit court, your petitioner sued out a writ of error from said circuit court of appeals, wherein such proceedings were had that a judgment of affirmance

was rendered on the 14th day of July, A. D. 1902, and such judgment, as your petitioner is advised, was unwarranted in law.

Petitioner therefore prays that a writ of error be allowed so as to have a review in the Supreme Court of the United States of said decision of said circuit court of appeals, presenting herewith a bond in proper form, an assignment of errors, a certified copy of the opinion of said circuit court of appeals and a certified copy of the record upon which said cause was submitted in said court.

HORATIO F. DALE,
WILLIAM CONNOR,
A. U. QUINT,
Attorneys for Petitioner.

HORATIO F. DALE, *Of Counsel.*

Writ of error allowed this — day of September, A. D. 1902.

____ ____,
Associate Justice, Supreme Court United States.

(Endorsed:) Supreme Court United States. Bankers Mut. Casualty Co., *vs.* The Minneapolis, St. Paul & Sault Sainte Marie R'y Co. Petition for writ of error. Filed Sep. 27, 1902, John D. Jordan, clerk.

(*Assignment of Errors.*)

And on the twenty-seventh day of September, A. D. 1902, an assignment of errors was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to-wit:

In the Supreme Court of the United States.

BANKERS MUTUAL CASUALTY COMPANY, Plaintiff in Error,
vs.
THE MINNEAPOLIS, ST. PAUL & SAULT Sainte Marie Railway Company, Defendant in Error.
} Assignments of Error.

Comes now plaintiff in error, Bankers Mutual Casualty Company of Des Moines, Iowa, and alleges that in the United States circuit court for the district of Minnesota, defendant railway company filed a demurrer to the complaint of said Bankers Mutual Casualty Company, which demurrer was sustained by said circuit court, and said plaintiff refusing to plead further a judgment on the merits was rendered dismissing the complaint of said Bankers Mutual Casualty Company and for costs. That thereafter the United States circuit court of appeals for the eighth circuit affirmed the judgment of said circuit court and adjudged that plaintiff in error should pay all

costs. Plaintiff in error further alleges that said several judgments are erroneous and against the rights of plaintiff in error, and that there is manifest error upon the face of the record in said judgment of the circuit court of appeals for the following reasons:

First. Conceding that defendant in error was a public agent (other than a public officer) carrying the United States mail, as held by said circuit court of appeals, the court erred in holding that defendant in error was entitled to exemption from liability for the loss of a registered letter while in the lawful custody of James Magson, the night operator of defendant in error, which loss was occasioned by the negligence, default or misfeasance of said employé; and further erred in holding that defendant in error was entitled to the same exemption from liability for the negligence, default or misfeasance of its employé, as a public officer of the United States would have had in respect to his subordinate officer engaged in the public service.

Second. The court erred in holding that defendant in error was a public officer of the United States, in that defendant in error was not a superior public officer appointed by the President by and with the advice and consent of the Senate, nor was it an inferior public officer appointed by the President, or by the head of a department, or by a court of law, and erred in adjudging that defendant in error had the same exemption from liability for the default, negligence or misfeasance of its employé which a principal public officer was entitled to, under the decision of this court made in the case of Robertson *vs.* Sichel in 127 U. S. 507.

Third. The court erred in holding that defendant in error was a public agent of the United States in this:

(*a.*) Defendant in error was not exclusively engaged in the performance of any Government function, but was a private corporation for pecuniary profit, organized under the laws of the State of Minnesota as a common carrier of persons and property, and was primarily engaged in such business, the carriage of the United States mail by it being merely incidental to its said ordinary business, and undertaken by it for the purpose of enhancing its revenue and profits.

(*b.*) As a corporation, defendant in error could act only by and through its agents and could not personally perform the duties of employing proper persons as subordinates, of properly supervising such subordinates, of discharging subordinates found to be incompetent persons, and of furnishing proper appliances for the conduct of said business, all of which are required to be done and performed personally by a natural person acting as a public officer.

(*c.*) Defendant in error was not and could not be sworn into the postal service of the United States.

Fourth. The court erred in holding that said James Magson, the night operator of defendant in error, was a subordinate public officer or agent of the United States in this:

(*a.*) Said Magson was an ordinary employé of defendant in error, employed and discharged at the will of defendant in error, and not

subject to discharge by any official of the United States; said Magson was paid from the ordinary revenues of defendant in error, and was mainly engaged in the performance of services for defendant in error as a common carrier, being engaged only incidentally in handling and caring for the United States mail at Harvey, North Dakota.

(*b.*) Said Magson was not sworn into the postal service of the United States.

Fifth. The court erred in its construction and application of postal regulation No. 713 set out in the complaint, and of the statutes of the United States relating to the carriage of the United States mail, in this:

(*a.*) The court refused to hold that defendant in error, considered as a principal public agent, was guilty of negligence in failing to furnish a suitable and safe place for the keeping of mail in its exclusive custody at its depot at Harvey, North Dakota, and in failing to place in charge of such mail a vigilant employé duly sworn into the postal service of the United States, and in each of said failures.

(*b.*) The court refused to hold that the abstraction of the registered letter in question from said mail pouch while in the exclusive custody of defendant in error in its depot at Harvey, North Dakota, under the circumstances stated in the complaint, did constitute negligence on the part of defendant in error, or of said night operator, Magson, or of both of them.

Sixth. The court erred in holding that under the allegations of the complaint said night operator, Magson, might have stolen said registered letter; and further erred in holding that in case said Magson did steal said registered letter defendant in error was not liable for the loss thereby caused to plaintiff in error.

Seventh. Plaintiff in error further assigned as errors each and all of the errors assigned in the circuit court of appeals on the hearing of this case before that court, and each and all of the same are hereby referred to and made a part of this assignment of errors as if herein fully set out.

Wherefore plaintiff in error prays that said order and final judgment of said circuit court of appeals and of said circuit court be reversed, with all costs of this suit.

September 11th, A. D. 1902.

HORATIO F. DALE,
WILLIAM CONNOR,
A. U. QUINT,
Attorneys for Plaintiff in Error and Petitioner.

H. F. DALE,
Des Moines, Iowa, of Counsel for Petitioner.

(Endorsed:) U. S. Supreme Court. Bankers Mutual Casualty Co. vs. The Minneapolis, St. Paul & Sault Sainte Marie R'y Co. Assignments of error. Filed Sep. 27, 1902, John D. Jordan, clerk.

(*Bond on Writ of Error.*)

And on the twenty-seventh day of September, A. D. 1902, a bond on writ of error was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to-wit:

Know all men by these presents, that we, Bankers Mutual Casualty Company of Des Moines, Iowa, as principal, and the United States Fidelity & Guaranty Company of Baltimore, Md., as surety, are held and firmly bound unto the Minneapolis, Saint P. & Sault Sainte Marie Railway Company of Minneapolis, Minnesota, in the full and just sum of five hundred ($500.) dollars, to be paid to the said The Minneapolis, Saint Paul, — Sault Sainte Marie Railway Company, its certain attorney, representatives or assigns: to which payment well and truly to be made, we bind ourselves, our successors and representatives, jointly and severally by these presents.

Sealed with our seals, and dated this eleventh day of September in the year of our Lord one thousand nine hundred and *ninety* two (1902).

Whereas, lately at the May term, A. D. 1902, of the circuit court of appeals of the United States for the eighth judicial circuit on the 14th day of July, in a suit depending in said court between Bankers Mutual Casualty Company, plaintiff in error, and The Minneapolis, Saint Paul and Sault Sainte Marie Railway Company, defendant in error, a final judgment was rendered against the said Bankers Mutual Casualty Company and the said Bankers Mutual Casualty Company having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said The Minneapolis, Saint Paul and Sault Sainte Marie Railway Company, citing and admonishing it to be and appear at a Supreme Court of the United States, at Washington, within thirty days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said Bankers Mutual Casualty Company shall prosecute said writ of error to effect, and answer all damages and costs if it fail to make good its plea, then the above obligation to be void, else to remain in full force and virtue.

BANKERS MUTUAL CASUALTY CO.,
By A. U. QUINT, *Treas.* [SEAL.]
THE UNITED STATES FIDELITY AND GUARANTY CO.,
By PORTERFIELD K. WITMER, [SEAL.]
General Agent.

Sealed and delivered in presence of
By J. D. WALLINGFORD,
Att'y in Fact.

Approved by
DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

U. S. Circuit Court, So. Dist. of Iowa.

I hereby certify that the surety on the within bond and the bond would be approved by me if same were presented for my approval.

Witness my hand and seal of said court at Des Moines, Sept. 11, 1902.

[SEAL.]

EDWARD R. MASON,
Clerk U. S. Circuit Court, So. Dist. Iowa.

(Endorsed:) United States Supreme Court. Bankers Mutual Casualty Company, plaintiff in error, *vs.* The Minneapolis, Saint Paul and Sault Sainte Marie Railway Co., defendant in error. Bond on writ of error. Filed Sep. 27, 1902, John D. Jordan, clerk.

(*Writ of Error.*)

And on the twenty-seventh day of September, A. D. 1902, a writ of error was filed in the clerk's office of said circuit court of appeals in said cause, the original of which, with the return thereon, is hereto attached and herewith returned.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the United States circuit court of appeals for the eighth circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court of appeals before you, or some of you, between Bankers Mutual Casualty Company, of Des Moines, Iowa, plaintiff in error, and The Minneapolis, Saint Paul and Sault Sainte Marie Railway Company, of Minneapolis, Minnesota, defendant in error, a manifest error hath happened, to the great damage of the said Bankers Mutual Casualty Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Seal of the Supreme Court of the United States.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 18th day of September, in the year of our Lord one thousand nine hundred and two.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] United States Supreme Court. Bankers Mutual Casualty Company *vs.* The Minneapolis, St. Paul and Sault Sainte Marie Railway Company. Writ of error. Rec'd Sept. 22, 1902. Filed Sep. 27 1902 John D. Jordan, clerk.

Return to Writ.

UNITED STATES OF AMERICA, *Eighth Circuit,* } ss:

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereto subscribe my name and affix the seal of the United States circuit court of appeals for the eighth circuit, at office in the city of St. Louis, Missouri, this sixth day of October, A. D. 1902.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

(*Citation.*)

And on the third day of October, A. D. 1902, a citation was filed in the clerk's office of said circuit court of appeals in said cause, the original of which with the admission of service endorsed thereon is hereto attached and herewith returned:

UNITED STATES OF AMERICA, ss:

To the Minneapolis, Saint Paul and Sault Sainte Marie Railway Company of Minneapolis, Minnesota, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the

clerk's office of the United States circuit court of appeals for the eighth circuit wherein Bankers Mutual Casualty Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable David J. Brewer, associate justice of the Supreme Court of the United States, this 18th day of September, in the year of our Lord one thousand nine hundred and two.

DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

[Endorsed :] 1727 United States Supreme Court. Bankers Mutual Casualty Company *vs.* The Minneapolis, St. Paul & Sault Sainte Marie Railway Co. Citation. Service admitted this 30th day of Sept. 1902 Alfred H. Bright defendant's attorney Filed Oct. 3—1902 John D. Jordan, clerk.

(*Clerk's Certificate.*)

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing seventy-three pages contain full, true and complete copies of all the pleadings, proceedings and record entries, including the opinion of said circuit court of appeals, in a certain cause wherein The Bankers Mutual Casualty Company was plaintiff in error, and The Minneapolis, St. Paul and Sault Sainte Marie Railway Company was defendant in error, No. 1727, May term, 1902, as full, true and complete as the same remain on file and of record in my office.

I do further certify that the original writ of error with my return thereto and the original citation with the admission of service endorsed thereon are hereto attached and herewith returned.

In testimony whereof, I hereunto subscribe my name and affix the seal of said circuit court of appeals, at the city of St. Louis, Missouri, in the eighth circuit, this sixth day of October, A. D. 1902.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Endorsed on cover: File No. 18,687. U. S. C. C. of appeals, 8th circuit. Term No. 141. Bankers Mutual Casualty Company, plaintiff in error, *vs.* The Minneapolis, St. Paul and Sault Sainte Marie Railway Company. Filed October 13th, 1902.